

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 24, 2019

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Martin, Vice Chairman Souza, Senators Heider, Lee, Harris, Burtenshaw, Bayer, Jordan, and Nelson

ABSENT/ EXCUSED: None

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Martin** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:00 p.m.

MOTION: **Senator Jordan** moved to hold **Docket Nos. 16-0309-1802** and **16-0310-1805**, Adult Dental dockets, for one week pending action in the House to strike portions of the dockets. **Senator Nelson** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1809 **Angie Williams**, School-Based Program Policy Analyst, Department of Health and Welfare (DHW), presented **Docket No. 16-0309-1809**, Personal Care Services, addressing school-based services (provided by schools) that are medically necessary. The change aligns provider qualification requirements in the schools with those in the community. It removes an outdated reference, thereby addressing concerns brought to the DHW's attention by stakeholders. The Medicaid Advisory Committee engaged with stakeholders, agreed with their concerns, and recommended changes that are reflected in this pending rule. No negotiated rulemaking was conducted, public input was invited, but none received. There is no impact to the General Fund.

PASSED THE GAVEL: Chairman Martin turned the meeting over to Vice Chairman Souza.

MOTION: **Senator Heider** moved to approve **Docket No. 16-0309-1809**. **Senator Burtenshaw** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1801 **George Gutierrez**, Deputy Administrator, Policy, DHW, presented **Docket No. 16-0309-1801**, Hospital Swing Beds. Changes allow increased flexibility for rural hospitals classified as Critical Access Hospitals that have less access to skilled nursing facilities, by authorizing additional swing bed days for those hospitals. Negotiated rulemaking was conducted, and there were public hearings with no input. The Idaho Hospital Association and other stakeholders had no concerns. There is no fiscal impact to the General Fund, but a possible savings. There are currently three hospitals participating in the rural communities of Arco, Butte, and Teton.

MOTION: **Chairman Martin** moved to approve **Docket No. 16-0309-1801**. **Senator Nelson** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0310-1807 **Mr. Gutierrez** presented **Docket No. 16-0310-1807**, Medicaid Termination of Enrollment. This docket applies specifically to enrollees in the Home and Community-based Services (HCBS) programs for Idahoans with certain disabilities. **Mr. Gutierrez** gave a detailed overview of the programs related to this rule change. A new program for youth necessitated adding language specifying conditions for disenrollment, to ensure that all HCBS populations are treated equally and to comply with federal regulations. Negotiated rulemaking was not conducted as the changes are required to align with the federal Social Security Act, but the DHW did discuss changes with program participants and families, other stakeholders, and legal representatives. There is no fiscal impact to the General Fund, or to other State or federal funds.

MOTION: **Senator Jordan** moved to approve **Docket No. 16-0310-1807**. **Senator Nelson** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1807 **Sara Stith**, Grants and Contracts Manager, DHW, presented **Docket No. 16-0309-1807**, Non-Emergency Medical Transportation, to comply with H 695 (2018) intent language regarding rate-setting methodology. Negotiated rulemaking was conducted, public hearings were held, and discussions were held with Emergency Medical Technicians who expressed concerns about the timeline for meeting this objective.

DISCUSSION: **Chairman Martin** had questions about the percent increase, and asked for a status report on this ongoing issue. **Ms. Stith** reported that the DHW has a \$7,973,300 line item request before the Joint Finance Appropriations Committee (JFAC), that they have engaged a new broker who is a valuable partner, and service levels are up while complaints are down. **Senator Lee** stated she has heard serious concerns from constituents and asked what would happen if the appropriation does not pass. **Matt Wimmer**, Deputy Administrator, Division of Medicaid, DHW, responded that it would be difficult if the appropriation does not pass, but regardless, the rule still stands for the methodology rate review. **Senator Lee** commented that this rule is looking like policy, is a significant funding request, and asked for any assurances. **Mr. Wimmer** provided some history on the issue, and reported that the Division of Medicaid has changed contractors and has learned better procurement practices for better outcomes.

MOTION: **Senator Heider** moved to approve **Docket No. 16-0309-1807**. **Chairman Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1810 **Tiffany Kinzler**, Bureau Chief, Medical Care, Division of Medicaid, DHW, presented **Docket No. 16-0309-1810**, Federal Compliance. Language was removed regarding a third party, "Pay and Chase" exclusion for prenatal care. No negotiated rulemaking was conducted as this rule is a federal requirement. A public hearing was held with no attendance or feedback. There is no fiscal impact to the General Fund. (Note: this docket was presented out of order.)

MOTION: **Senator Burtenshaw** moved to approve **Docket No. 16-0309-1810**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1805 **Ms. Kinzler** presented **Docket No. 16-0309-1805**, Primary Care Case Management, Fixed Enrollment. H 128 (2017) gave authority to establish a value-based procurement model to foster strong medical provider and patient relationships. The rule change encourages the best match with a provider upon enrollment.

- DISCUSSION:** **Chairman Martin** inquired about guidance to providers. **Ms. Kinzler** explained that providers have standards for billing and diagnosis. She went on to explain that members choose their provider, or one is assigned if none is chosen. The member can change their provider if they move (or their provider moves) more than 35 miles away; if their care requires management of co-occurring conditions; if there are religious or moral barriers; for poor quality of care; placement in foster care; or due to an administrative error in the assignment.
- MOTION:** **Senator Harris** moved to approve **Docket No 16-0309-1805**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.
- DOCKET NO. 16-0309-1806** **Ms. Kinzler** presented **Docket No. 16-0309-1806**, Rules Governing Pharmacy, to align with federal requirements. It adds the definition for the Prescription Drug List (PDL)—providing clarification between the PDL and additional criteria, clarifying that there is no self-payment allowed under Medicaid for controlled substances, and eliminating prescription refills at the patient's request. Negotiated rulemaking was conducted, and public hearings were held with no feedback. There is no fiscal impact to the General Fund.
- DISCUSSION:** **Senator Lee** had several questions regarding whether the designations were new, if this is a new process, and how a disagreement with the recommending committee might be handled. **Mr. Wimmer** replied that it is not a new process, only new language to make it clearer; it has always been a federal requirement to have a pharmacy committee. DHW has always had final approval in the case of any disagreement, adding that there is no history of *not* accepting the committee recommendation. **Chairman Martin** asked for information about cash payments for controlled substances on the list, and for a definition of controlled substances. **Ms. Kinzler** explained that drugs fall into Schedule I through V categories. Schedule II medications are narcotics, sedatives, and stimulants, with risk for potential abuse and danger. **Vice Chairman Souza** inquired about the typical length of a prescription period and what would happen if a prescription is written for 15 days and a patient requests a 30-day supply. **Dr. Tammi Eidi**, Medicaid Pharmacy Manager, DHW, explained that most prescriptions are written for one month's usage. Some chronic pain patients might be on doses above the typically recommended level. Providers attempt to prevent safety issues, and cash payment makes usage issues difficult to track. **Vice Chairman Souza** asked for information about the use of alternatives to narcotics in pain control. **Dr. Eidi** outlined various alternatives including lidocaine patches and physical therapy, and reported that chronic, non-cancer pain does not respond well to opioids and that some opioid users develop hyperalgesia.
- TESTIMONY:** **Jodi Broyles**, pharmacy student at Idaho State University, expressed concerns about certain language prohibiting cash payment for controlled substances, citing the use of benzodiazepines for treatment of epileptic seizure disorder. She gave an example of a patient under her care who reportedly misplaced her medications and had no history of drug abuse.
- DISCUSSION:** **Senator Jordan** asked Dr. Eidi why Medicaid could not be billed in this instance. **Dr. Eidi** replied that in this case it was likely flagged and rejected as a "refill too soon", however in most cases, Medicaid allows overrides, including a "72-hour emergency fill" rule.
- TESTIMONY:** **Pam Eaton**, Idaho Retailer's Association, testified against this rule process, stating that she was not engaged as a stakeholder and should have been. She stated that the Board met their legal requirement, but not the spirit of the law. **Ms. Eaton** added that her association members take issue with the scope of the cash limitation beyond opioids.

MOTION: **Chairman Martin** moved to approve **Docket No. 16-0309-1806**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Souza passed the gavel to Chairman Martin.

UNANIMOUS CONSENT: **Chairman Martin** asked unanimous consent to hold **Docket Nos. 16-0309-1802** and **16-0310-1805** to a date certain: January 30, 2019. There were no objections.

ADJOURNED: There being no further business at this time, **Chairman Martin** adjourned the meeting at 4:35 p.m.

Senator Martin
Chair

Margaret Major
Secretary