

Minutes of the Joint Legislative Oversight Committee

March 24, 2015

Lincoln Auditorium, Capitol, Boise, Idaho



Cochair Representative John Rusche called the meeting to order at 7:34 a.m. Attending the meeting were Senators Cliff Bayer (cochair), Steve Vick, Michelle Stennett, Cherie Buckner-Webb and Representatives Maxine Bell, Gayle Batt, and Elaine Smith. Also present were Rakesh Mohan, director; Margaret Campbell, administrative coordinator; and other OPE staff. Audience members included the following:

Representatives Mat Erpelding, Wendy Horman, Phylis King, and Ilana Rubel
Tim Corder, Special Assistant to the State Superintendent of Public Instruction; Pete Koehler, Interim Chief Deputy, Will Goodman, Associate Deputy, Department of Education
John Goedde, former chair, Senate Education Committee

Approval of meeting minutes from March 23, 2015

Members had not had an opportunity to review the minutes. Cochair Rusche put approval on hold until the next meeting.

OPE workload discussion

Cochair Rusche called on Rakesh to discuss the workload. Rakesh discussed seven follow-up reviews that needed to be conducted:

1. Application of the Holiday Leave Policy
2. The State's Use of Legal Services
3. Strengthening Contract Management
4. Challenges and Approaches to Meeting Water Quality Standards
5. Confinement of Juvenile Offenders
6. Assessing the Need for Taxpayer Advocacy
7. State Employee Compensation and Turnover

Rakesh said the follow-up reviews had been delayed for two reasons: (1) some required more time for agencies to implement recommendations and (2) office resources had been devoted to new evaluations. He said his goal was to complete the follow-up reviews by the end of the 2016 session.

Rakesh said that four reports needed committee direction for moving forward:

1. Idaho's Instructional Management System (Schoolnet) Offers Lessons for Future IT Projects
2. The K-12 Longitudinal Data System (ISEE)
3. Use of Salary Savings to Fund Employee Compensation
4. The Department of Health and Welfare's Management of Appropriated Funds

He recommended the committee meet in December or the first week of January for a status report on the instructional management system and the ISEE reports. The salary savings report had been presented to CEC Committee and to JFAC. Rakesh said he had talked with the cochairs of the CEC Committee, and they had indicated no other work was needed. The report on the management of appropriated funds, which had one recommendation for Health and Welfare to



automate its annual reporting, had been presented to the Health and Welfare committees and JFAC. Rakesh said that unless JFAC or the Health and Welfare committees had any concerns, he would recommend not conducting a follow up.

In response to Cochair Rusche's question about any remaining work, Rakesh recommended closing the reports on salary savings and DHW management of appropriated funds.

Representative Batt moved to close two reports: *Use of Salary Savings to Fund Employee Compensation* and *The Department of Health and Welfare's Management of Appropriated Funds*. Representative Bell seconded the motion, and it passed by voice vote.

Cochair Rusche said the committee would leave the instructional management system and the ISEE reports open to see what the Department of Education does in the next several months. Rakesh said he would provide a status report on those in December or January.

Representative Batt said she would like to hear a full presentation of the Schoolnet report. Rakesh said he would schedule a meeting for that presentation. A need for follow-up could be decided after the status update in December or January.

Rakesh said that SCR102, approved by the full Senate and the House Transportation Committee, was waiting a hearing before the full House. The resolution, initiated by Senator Brackett, asks JLOC to approve a study of the Local Highway Technical Assistance Council (LHTAC). The resolution was similar to a 2008 resolution that asked OPE to oversee an audit of the Idaho Transportation Department. If approved, the OPE would hire outside consultants with a fiscal impact of \$250,000 appropriated for contract costs. Rakesh said the release would occur in January 2017 and should not significantly affect the workload of the office—it would require his time to hire a consultant and oversee the contract. Again, JLOC needed to approve this study before the OPE could conduct it.

Cochair Rusche asked where the OPE would find \$250,000 if the resolution passed. Representative Bell said the money would not come out of the OPE budget. Most likely JFAC would pass a trailer bill. Rakesh asked whether JLOC wanted to approve the resolution pending its approval in the House. Cochair Rusche recommended waiting until the resolution was passed and funded.

Rakesh spoke to a request from Jani Revier, administrator of the Division of Financial Management. Her request came out of a meeting called by Senator Dean Mortimer (Education Committee chair) that Rakesh and Lance McCleve (principal evaluator) had attended with staff from the division. The division had built a model to explain education changes in support units but could not explain a spike in the 2013 midterm support units of school age children. (Lance McCleve, principal evaluator, had done extensive work with the department's database while conducting an evaluation on workforce issues affecting public school teachers, and the division wanted to use his expertise to understand reasons for the spike.) Rakesh said the request was not an evaluation and was too large for a 24-hour review—it would take three to four weeks to complete. Information would be useful to the division and possibly to Paul Headlee (education analyst at Budget and Policy Analysis Division), and would hopefully respond to Senator Mortimer's questions.

Representative Bell said she did not see the point. The state calculates funding by support units on a five-year and ten-year rolling average and uses a savings account. Growth was occurring regardless of where the children were coming from. She said she did not see how the results of the request would provide anything more valuable than what the appropriations process already had in place. She added that she did not see this request as falling into the field of performance



auditing. Senator Bayer said during his time in the appropriation process, he had seen differing recognitions of support units built into the budgets that were dynamic and lacked consensus on growth in one or two years. These differences were an anomaly because normally everyone broadly agreed on funding. He indicated that helping with the request might shed some light on the differences. Cochair Rusche, agreeing with Representative Bell, said the request was outside the scope of a performance evaluation. He said he hoped the new administration at the Department of Education would be able to figure out the spike by counting differently. Rakesh indicated that JFAC had not asked the OPE to look into the problem, but if the problem persisted, the request could come back as an evaluation proposal next year.

Topic selection

Cochair Rusche asked Rakesh to walk the committee through the process of topic selection. Rakesh said the committee had received eight proposals on a broad spectrum of issues. He suggested selection criteria be based on the proposal's importance, timeliness and relevance, ability to meet broad interests of the Legislature and others, scope of impact—a statewide or local issue, and likelihood of use. If some proposals were more likely to be used than others, he asked the committee to please select those.

Rakesh suggested that selection could occur in two stages. Members could pick their top three preferences, and then Rakesh would review the scope size of the top choices. A final selection could then occur. Because of the workload of the follow-up reviews, Rakesh said he could take three evaluations. The committee would be deciding on the following proposals:

1. Optum contract for Behavioral Health Services
2. Workers Comp for firefighters/first responders
3. Sales tax exemptions
4. Administrative hearing officers
5. Child Protective Services
6. Agency budget request for purchase of IT equipment
7. Public health district financing
8. School-based Medicaid funding

Representative Bell said the selection process Rakesh proposed was a perfect process—either ranking all topics or ranking the top three. Cochair Rusche said he echoed Rakesh's criteria by choosing topics that have opportunities to affect performance of state government. He asked members to mark their top three proposals on a ballot.

Department of Education's response to the Schoolnet report

While waiting for the OPE staff to tally the results, Cochair Rusche called on Tim Corder, special assistant to the state superintendent, to address the committee. Mr. Corder apologized for not being present at the report release. He said he wanted to respond appropriately to the committee's concerns of report findings and indicated that he looked forward to follow-up reviews. He said that Superintendent Ybarra was in Washington DC and could not be in attendance.

Mr. Corder said the report was accurate. The problems identified in the report came from the previous administration, and Superintendent Ybarra was determined to fix the problem. The Department of Education wanted the public to have confidence in its solutions. Schoolnet was based on a contract that was not administered appropriately. When the new administration took over, they could not determine how the 1,500 contracts (acquired and paid for by the



department) were being administered. They hired an outside contractor to audit the contracts, and he said he expected the results by the end of the week.

Mr. Corder said there was no misuse of funds, but funds were not used in the most prudent way. Already approved by JFAC, he said the department would add a person to oversee department contracts—a role no one in the last administration had done. He said the new administration wanted solutions and JLOC could trust them—he said they would never forget they were doing these things for the children.

Mr. Pete Koehler, interim chief deputy of the department, said the report offered two options for moving forward—dig deeper or move into a different direction. He said the department would move in a different direction. Last year the department had used \$2.5 million for Schoolnet in its support for districts. This year the department had asked for \$985,000 to support Schoolnet for one more year because some districts were using it successfully. Some of that amount would be set aside for the contract that had not been closed yet. He said Schoolnet went south because the previous administration had tried to make it a statewide system. It was a good system at the local level but not designed to be a state system.

Cochair Rusche said the project seemed to be a problem with the vision of a statewide system. He asked if the state needed a statewide system—indicating the entire vision may have been flawed. Mr. Koehler said he was not there, so he could not comment on the vision. He said information management systems (IMS) help teachers, parents, and principals work with children. The information coming out of an IMS was of no use to the department—it was designed for the teacher to evaluate child performance. In a perfect system, if a child moved from Parma to Twin Falls, it would be nice to have that information but technology was not there yet.

Representative Batt asked if the department could recoup money. Mr. Koehler said he would have to defer that answer to the Office of the Attorney General. He said he would be holding onto money for the contract because all terms have not been delivered. The department was trying to show that these mistakes will not happen again to restore faith of the J. A. and Kathryn Albertson Foundation.

Topic selection (cont.)

Bryon Welch calculated and displayed the results of the voting:

1. Optum contract for Behavioral Health Services—8 votes
2. Administrative hearing officers—4 votes
3. Public health district financing—4 votes
4. School-based Medicaid funding—3 votes
5. Sales tax exemptions—2 votes
6. Workers Comp for firefighters/first responders—1 vote
7. Child Protective Services—1 vote
8. Agency budget request for purchase of IT equipment—1 vote

Rakesh reviewed the size of the scopes. He said the Optum project was quite big and he would need to narrow the focus. In addition, he said that members had wanted the OPE to look at contract management and oversight issues. The project would probably be 1.5 to 2 times a regular-sized project. Administrative hearing officers and public health district financing were regular-sized projects. None of the top three projects were small.



Senator Bayer said the results seemed to show the path going forward. He was ready to make a motion for the top three topics. He asked Rakesh if the top three were a manageable workload. Rakesh said yes.

Senator Bayer moved to adopt the top three projects as listed on the screen for future OPE studies. Representative Batt seconded the motion, and it passed by voice vote.

Representative Bell said the committee had seen a lot of activity for Medicaid in schools. She said she hoped the Department of Health and Welfare had received that message and would look at doing something. Rakesh said that with Representative Bell's comments recorded in the minutes, the OPE would forward them to the Department of Health and Welfare and the Department of Education.

The meeting adjourned at 8:29 a.m.



House of Representatives State of Idaho

MINORITY LEADER

Dear Joint Legislative Oversight Committee,

There have been almost continuous complaints about behavioral health services managed under the DHW Medicaid contract with Optum Idaho. There appears to be a significant difference in view depending on who is the observer—patients, providers, Optum, or our own department. As a representative, it is very difficult to reconcile these.

After hearing what sounds like significant problems in the system established by the Optum/DHW/Medicaid contract, I have several questions.

1. To what extent does the limited contract cause or aggravate things? The fact that a managed care company is charged with managing a limited set of “covered” benefits and not the entire spectrum of care appears problematic.
 - a. Is this approach (risk for limited outpatient services) standard in Medicaid plans?
 - b. How are services within the Optum contract integrated with other behavioral health services, such as medication, hospital care, and other services?
2. Utilization Management has been an issue.
 - a. Are Optum’s protocols consistent with other UM protocols in other states, and are these states regarded as successful?
 - b. How are the protocols communicated, or how is the fact that they’re ‘best practices’ communicated?
 - c. Do appeals conform to law? Are they industry standard/best practice?
3. It has been difficult to acquire data on these patients, not just for behavioral health services but also for other publically funded services, from ER and Community hospitalization to hospital readmits court, and public safety expenses. Does H&W have systems in place to measure the effectiveness and cost of the managed BH effort?
4. Are the recovery models used standard for chronically ill patients?

Thank you for considering this important issue.

Sincerely,

A handwritten signature in black ink that reads "John Rusche".

Rep. John Rusche
Minority Leader
District 6 B

Background Review Requested by Representative John Rusche

Optum Idaho

Prepared by Ryan Langrill

This is not an evaluation

Background

In 2011, the Idaho Legislature passed House Bill 260, which initiated a change in the way Medicaid provided behavioral health services in Idaho. Behavioral health services include mental health and substance abuse treatment and prevention. The Department of Health and Welfare reported in 2012 that “Medicaid primarily pays for procedures, tests and visits without regard to quality or outcomes.” The new model moved Idaho from this fee-for-service model with artificial caps in the number of services, to a managed care model that accounts for patient specific needs, such as most other states have.

The department put out an RFP for a managed care program for Medicaid’s behavioral health services. United Behavioral Health won the bid. On September 1, 2013, United Behavioral Health, doing business as Optum Idaho, took over the management of Idaho’s Medicaid behavioral health services. Lisa Hettinger, the Administrator of the Division of Medicaid, has commented that the contract with Optum is very closely monitored.

The contract is a “Firm Fixed Fee, Indefinite Quantity” contract. This means that the state pays Optum a specific fee, and Optum must provide whatever services are necessary. If costs exceed the fee the contractor takes a loss, and if there are greater than expected cost savings, the contractor earns additional profit. The contract appears to have escalators in place: In September 2013 Optum received \$10,225,000, and each month the amount has increased by an average of \$92,000 per month. The contract provides for penalties if Optum fails to meet any of the several performance metrics.

Optum has been the subject of several news stories with providers reporting that “services to at-risk patients have been cut, wait times for approving care have increased, lengthy approval process often are changed, and Optum has created burdensome red tape that costs providers time and money.” Service providers reported that Optum has paid very slowly or substantially less than they should have: some providers reported receiving checks for pennies on the hundreds of dollars. In addition, providers reported spending significant time on hold when trying to get approval for a service.

Overall, the problems reported include the following:

- A lack of publically accessible data, both about Optum in particular and the status of behavioral health public outcomes in Idaho in general.
- Significant reduction of community based rehabilitation services (CBRS) in a way that lacked transparency.
- Inadequate notification of denial of service to members and an opaque appeal process.
- Slow responsiveness to providers in approval and payment.

A lack of data

The department has a publicly available Optum data dashboard. The dashboard, which is updated weekly, shows the claim and denial counts by week, the top five reasons for claims denials by month, the rate of claims paid in 1 to 10 days by month, and metrics for call performance by week. Most of the data is only publically available for the prior five reporting periods, so trends are difficult to track.

The value of the dashboard appears to be questionable. Providers report that they “call and talk to a person at Optum right away, but that person is a ‘human answering machine’ who tells the provider he or she will call back within 48 hours.” This improves reported metrics, which only indirectly measure meeting provider needs. The metrics may possibly be technically correct but give an artificial picture of Optum’s performance. The metrics may normally give a picture of performance, but by tying incentives to the metrics, the department severs the relationship between the two (as the ‘human answering machine’ example demonstrates).

Optum’s contract stipulates 33 reports that Optum must give to the department, most of which are required on a monthly or quarterly basis. These reports include measures of member and provider satisfaction, time spent on hold, time to return phone calls, days taken for formally documented authorization, and time taken to provide urgent services. The reports appear to be more useful in judging Optum’s responsiveness than the metrics included in the data dashboard. In addition, Optum must give, bi-annually and as requested, progress reports. None of these, including the progress reports, seems to be publically available except through the data dashboard. According to Kathee Garrett, the department responded to a request for these reports that “not all required reports would be available due to some lack of technology on Optum’s part.” Given that the department requires Optum send the reports in Excel spreadsheet format, it is unclear what this means.

We could describe whether reports come in as indicated and describe the department’s process of auditing the reports. We could assess the usefulness of the data dashboard and which metrics the department might make publically available. Given the richness of the data Optum is supposed to report to the department, it is unlikely that we could produce any additional data, though we could uncover useful trends and relationships. The contract gives the department the right to modify performance metrics at its discretion as long as the modification does not alter the contract’s terms, so the department might find the evaluation useful if findings suggest additional or altered metrics.

Discontinuation of community based rehabilitation services (CBRS)

Optum Idaho, as directed by Health and Welfare, will only pay for “evidence based services.” As is the case in any complex system, experts can interpret evidence in a variety of ways, and lay people and providers may have an even broader variety of interpretations given their personal experience. As of August 2014, Optum had reduced its coverage of CBRS. CBRS proponents

claim that their service works and is cheaper than many alternatives. Since Optum does not pay for some of these alternatives, such as prison, Optum has inadequate incentive to pay for these services. Providers have also complained that the process and evidence used to eliminate CBRS coverage were not transparent.

We could describe the process at the department and Optum in deciding which services are covered. This process could be compared with those in other states and those recommended in literature to assess whether providers could be better included or informed of the process.

Inadequate notification and opaque appeal process

Optum's contract and Idaho and federal law stipulate certain notification requirements for reductions or denials of service and require that members be notified of the appeal process. The department has been sued for notification problems in the past (see *Leitter v. Armstrong*), and the federal government has indicated that the department's current hearing officer arrangement is inadequate and, unless altered, could result in the loss of federal funds. The governor's 2016 fiscal year budget moves the responsibility for Medicaid hearing officers to the Office of the Attorney General to correct this problem.

We could discuss with members and providers what they receive when services are reduced or a claim is denied or partially denied, including members with barriers to understanding standard communications. These processes could be compared with those in other states, especially those recognized as having superior practices. Given the transfer of responsibility to the attorney general's office that might happen in July, our descriptions of conditions in Idaho might become quickly outdated. A description of common practices, however, could be especially useful as new people take on the responsibility.

Slow responsiveness

News reports on Optum highlight delays in approving, processing, and paying claims. Optum's contract stipulates specific timelines for actions, as well as reports that show whether Optum is meeting its timelines.

We could analyze the data that Optum provides to the department to identify any trends in performance, as discussed above. In addition, we could compare the requirements in Optum's contract with the expectations and reality of performance in other states. We could work with providers who report problems and cross-reference those problems with data reported to the department. Do media reports represent outliers or old stories, presented as the norm? Do the data show a systemic problem? Or are the problems not captured by the data, potentially indicating a disconnect between providers experience and the reports to the department?

Takeaway

Optum reports that it has a 95 percent member satisfaction rate, and the Department of Health and Welfare defends Optum, though acknowledging some transition problems. Complaints about Optum are often lumped in with inadequacies with Idaho's behavior health care in general. These complaints might exist even if Optum is doing its job properly, and efforts ought to instead be aimed at other problems.

An Office of Performance Evaluations report could help clarify these issues. The department appears to expend significant resources monitoring the Optum contract, and an independent

description of this monitoring may have value regardless of the quality of the monitoring. Positive findings would allow reform efforts to shift to other problems, while negative findings could focus those efforts more productively. An evaluation may also lead to greater transparency in the contract moving forward and would give policymakers valuable information when the decision to extend Optum's contract is made in 2016.

It is unclear whether Optum's contract mandates cooperation with us. The contract specifically mandates cooperation with federal inspectors or auditors and gives the department significant contract monitoring power, but Optum's contract does not specifically mandate cooperation with non-Health and Welfare *state* entities. An evaluation would best include strong cooperation from the department and a proper cross section of stakeholders in the behavioral health community.

Stephen Hartgen

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March 10, 2015

Members of the JLOC Committee
c/o Chairs, Sen. Cliff Bayer and Rep, John Rusche

OPE Request on Workers Compensation Related to Firefighters and other First Responders

Dear Committee Members:

I am requesting approval of an OPE project for 2015 to take a look at the costs and benefits of expanding workers compensation coverage for first responders. The intent would be to gather Idaho specific data on workers compensation costs, numbers of first responders in various categories, how to handle volunteers, etc. A recent study by the National Council on Compensation Insurance (2014) basically said there was too much variance nationally to conclude that one model would work for everyone. It reviewed the approaches used by the various states but did not draw any conclusion as to which states had the best model.

The firefighters bill (2014) was (and is) crafted to benefit their industry only, but the workers compensation issue is broader than that and if we are going to make progress and make the right decision for Idaho as a state, we need a broader look. This would include the costs and benefits by various approaches, including how (and whether) to include volunteer first responders, such as local firefighting units, QRUs, EMTs and others. An OPE overview would give us the information we will need to write legislation which is appropriate to the need and affordable to the various parties involved.

We should also look at whatever restrictions are out there on workers' compensation now. One participant in our committee hearings alluded to a part of the code which might which would need to be changed, as it apparently restricts co-payments for workers' compensation in general. We will need to look at whatever hurdles may exist within the code.

An OPE study along these lines would be of significant help in identifying a clear path forward on this issue.

Thank you for your consideration.

Rep. Stephen Hartgen
Chair, House Commerce & Human Resources Committee

Background Review Requested by Representative Stephen Hartgen

Worker's Compensation Related to Firefighters

Prepared by Chelsea Shaver

This is not an evaluation

Overview

Recent medical studies have concluded that firefighters are at an increased risk of certain types of cancers as a result of exposure to chemicals, heat, and smoke. While research has concluded that firefighters are at an increased risk, it is difficult to pinpoint the exact moment of exposure typically required in worker's compensation claims. This has led to many states adopting presumptive provisions within their worker's compensation statutes specific to firefighters. Including a presumption would aid the firefighter in a worker's compensation claim by presuming the firefighter (eligible under statute) was exposed as a result of the occupation, and the occupation of firefighting causes a greater risk of certain cancers compared with the general public.

Medical research

A 2006 report issued by the University of Cincinnati concluded that based on quantitative summary risk estimates, 10 cancers were significantly associated with firefighting. Of the cancers researched, testicular, multiple myeloma, non-Hodgkin's lymphoma, and prostate were among the highest.¹ This report referenced the International Agency for Research on Cancer, which has identified the following carcinogenic risks to humans: acrolein, benzene, methylene chloride, formaldehyde, and asbestos. The University of Cincinnati reported that firefighters have been known to come into contact with these carcinogens and may not be fully protected. "In some situations, respiratory protection equipment may be inadequate, or not felt to be needed resulting in unrecognized exposure."²

¹ Grace K. LeMasters, PhD, "Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 Studies," *Journal of Occupational and Environmental Medicine* 48 (2006): 1190

² *Ibid.*, 1200.

Other state action

Currently, 30 states have cancer presumptions specific to firefighters. Most presumptive statutes list conditions, including years of services, completion of a health examination before employment, and limited latency periods (time between cause and effect). The conditions can fluctuate greatly from state to state; for example, years of service ranges from five years in Oregon to ten years in Louisiana.³ Additionally, there are variances in the occupational diseases specifically covered under statute. In New Mexico's code, specific cancers are listed that the presumption shall apply to, as well as time limits on the presumption:

If a firefighter is diagnosed with one or more of the following diseases after the period of employment indicated, which disease was not revealed during an initial employment medical screening examination or during a subsequent medical review pursuant to the Occupational Health and Safety Act [50-9-1 NMSA 1978] and rules promulgated pursuant to that act, the disease is presumed to be proximately caused by employment as a firefighter: (1) brain cancer after ten years; (2) bladder cancer after twelve years; (3) kidney cancer after fifteen years; (4) colorectal cancer after ten years; (5) non-Hodgkin's lymphoma after fifteen years; (6) leukemia after five years; (7) ureter cancer after twelve years; (8) testicular cancer after five years if diagnosed before the age of forty with no evidence of anabolic steroids or human growth hormone use; (9) breast cancer after five years if diagnosed before the age of forty without a breast cancer 1 or breast cancer 2 genetic predisposition to breast cancer; (10) esophageal cancer after ten years; (11) multiple myeloma after fifteen years;⁴

Oklahoma has a broader statute which does not identify specific cancers to be included in the presumption:

Any member of the fire department of any municipality who is disabled as a result of heart disease, injury to the respiratory system, infectious disease, or the existence of any cancer which heart disease, injury to the respiratory system, infectious disease, or cancer was not revealed by the physical examination passed by the member upon entry into the department, shall be presumed to have incurred the heart disease, injury to the respiratory system, infectious disease, or cancer while performing the firefighter's duties as a member of such department unless the contrary is shown by competent evidence.⁵

Another common inclusion in state statute is a rebuttal clause, indicating the presumption can be overruled by a preponderance of evidence that the condition was caused by some means other than the occupation. The presumptive statute in Alaska reads, "This presumption of

³ Oregon Code § 656.802 and Louisiana Code § 33:2011

⁴ New Mexico Code § 53-3-32.1

⁵ Oklahoma Code § 11-49-110

coverage may be rebutted by a preponderance of the evidence. The evidence may include the use of tobacco products, physical fitness and weight, lifestyle, hereditary factors, and exposure from other employment or non-employment activities.”⁶

Including conditions such as length of service, identifying specific occupational diseases, as well as including a rebuttable clause would help to limit the amount of claims eligible under the presumption. Including such provisions can also create a challenge in identifying the costs associated with the legislation.

Study by National Council on Compensation Insurance (NCCI)

An evaluation by the NCCI aimed to quantify the costs of adding firefighter presumptions. It concluded that due to limitations, quantifying the potential cost would be difficult. The limitations included the following: data limitations, since data reported to NCCI account for only 20 percent of career firefighters; differences in statute, such as conditions and applicability; and variances in judicial review.⁷

The Office of Performance Evaluations could look at these variances in relation to Idaho. If Idaho were to adopt the New Mexico model, the costs may be reduced due to the specificity of the legislation. Oppositely, if Idaho were to adopt the Oklahoma model, the costs may be higher due to the ambiguity of the legislation. The OPE could also review the current worker’s compensation model and identify the potential risks to coverage. An additional variation the OPE could evaluate would be the inclusion of volunteer firefighters. If Idaho were to adopt this presumption, the OPE could review the impact that including volunteers firefighters would cause, such as the number of individuals covered under the presumption, and the related increase in worker’s compensation premiums. The effectiveness of this evaluation would depend on the cooperation of applicable agencies and stakeholders, as well as available data.

Evaluation questions

Additional questions to consider:

- Does the inclusion of this presumption significantly change the worker’s compensation claims process (evidence of causation, etc.)?
- If a rebuttable presumption was included, would it be retroactive? What would be an appropriate latency period?
- What are the consequences of including provisions specific to an occupation without recognizing other potentially hazardous occupations?

⁷ National Council on Compensation Insurance, NCCI White Paper on Firefighter. 2014. Web. 27 Feb. 2015. 14-16

- If we recognize the potential threats to career firefighters in Idaho Code, should this too apply to volunteer firefighters? What would be the associated costs and how would they be funded?

Selected references

- Alaska Code § 23.30.121
- LeMasters, PhD, "Cancer Risks Among Firefighters," 11900-1200
- Louisiana Code § 33:2011
- National Council on Compensation Insurance, NCCI White Paper on Firefighter. 2014. Web. Accessed 27 Feb. 2015.
- New Mexico Code § 53-3-32.1
- Oklahoma Code § 11-49-110
- Oregon Code § 656.802

Rep. Phylis King
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COMMITTEES

JFAC
Commerce and Human Resources
Transportation and Defense

House of Representatives State of Idaho

March 13, 2015

Senator Cliff Bayer
Representative John Rusche

JLOC request

Sales tax exemptions

As I work on JFAC, I realize that there are agencies that struggle to meet their mission and provide services to Idaho citizens. Examples: We need more money for roads and bridges. Our support per student in schools is last in the nation. We are one of seven states that does not support Head Start—a proven early childhood education program. We can't find \$40,000 for guardian ad Litem—a program to provide a court advocate for neglected and abused children—our neediest citizens. We often work hard to find matching funds for grants for roads, health and welfare, and other valuable programs.

We give away billions in sales tax exemptions. On page 83 of the General fund Revenue Book published by the Department of Financial Management there is a list of all the sales tax exceptions and exemptions and the value LSO has placed on them, but we wanted more history.

1. We would like to know when each exemption was enacted.
2. What was its fiscal note when it was enacted and what is its value now?
3. Has lost revenue that we see today correlate with the original fiscal note? Can we see a trend for some business sectors who are receiving exemptions?
4. What purpose was the exemption supposed to give to the state economy?
5. Has the exemption been successful in increasing jobs and the number of new businesses?
6. If it is not obvious, who mostly benefits from this exemption and how many are benefited.

With this data, we hope to enable legislators to make informed decisions regarding which exemptions are still benefitting Idahoans and to understand the true fiscal impact of such exemptions.

Sincerely,

Representative Phylis King
Representative Ilana Rubel



House of Representatives State of Idaho

Date: March 12, 2015
To: JLOC
From: Representative Lynn Luker & Senator Grant Burgoyne
Re: OPE Evaluation Request
Subject: Administrative Hearing Officers

Background: Administrative hearing officers are used by many state agencies to resolve conflicts and hear appeals in the areas that they regulate. Currently, Idaho's agencies control their own selection and contracting process with regard to hearing officers. A conflict arises when the agency is also a party in the contested case, which in many agencies is frequent. Additionally, appeals in such cases may be decided by the director of the agency.

One example is that the federal Center for Medicaid recently threatened to withhold federal funds from Idaho's Division of Medicaid because their hearing officers are employed and contracted by the Department of Health and Welfare, creating a clear conflict of interest. To respond to the federal government's concerns, the hearing officers responsible for Medicaid are becoming part of the Office of the Attorney General. Similar conflicts exist in other state agencies that perform dispute resolution related to matters that they regulate.

For citizens and businesses working with, or receiving services from, state agencies, it is imperative that administrative hearings are fair and unbiased. We wish to know the extent to which agency contested case hearing processes create potential conflicts of interests and what possible alternatives exist. This evaluation will help us establish guidelines for the provision of administrative hearing officers, establish fair and consistent appeals processes, and ensure that it is cost-effective, impartial, and transparent.

Our questions are, specifically:

- 1) What are the various models of hearing officer use in Idaho's agencies? How many cases and appeals are decided by an officer paid by the agency or the director of that agency?
- 2) Do Idaho's administrative hearing processes comply with state and federal requirements (both of the Administrative Procedure Act and of any particular granting agency)?
- 3) What safeguards exist to avoid and mitigate the effects of conflicts of interest, both real and perceived?
- 4) How do other states maintain transparency and integrity in their administrative hearing process? How does Idaho's process compare?
- 5) What are various alternatives to our current process? Are the alternatives viable in Idaho, and if so, what would they cost?

Yours truly,

A handwritten signature in blue ink, appearing to read "Lynn M. Luker".

Rep. Lynn M. Luker

Christy Perry

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House of Representatives State of Idaho

COMMITTEES

Chairman - Ways & Means

Health & Welfare

Judiciary, Rules, & Administration

Local Government

EMAIL: cperry@house.idaho.gov

March 12, 2015

Rakesh Mohan, Director
Office of Performance Evaluations
Idaho Legislature
954 W Jefferson St Fl 2
Boise, Idaho 83702

Dear Rakesh:

Child Protective Services plays an integral role in state and county government. When child protection is effective, it can reduce costs for schools, law enforcement, behavioral health, corrections, and courts. When child protection is ineffective, costs are imposed not just on the child and her community, but on other sectors of government and society as well.

The Office of Performance Evaluations reported in February of 2015 that the current arrangement between county prosecutors and the Department of Health and Welfare does not comply with state law, and that significant federal dollars go unrecovered for legal work. In addition to the legal work, given changes in child protection and in the structure and function at Health and Welfare, there may be other areas where child protection no longer complies with the law or where inefficiencies have developed.

In February of 2014, the Idaho Office of Performance Evaluations completed a study of the process of committing juveniles to the Idaho Juvenile Corrections Department. The study found some interesting and alarming trends especially as they relate to child protection services. The study noted that "most frequently, juveniles committed to state custody from January to May 2012 showed up in Health and Welfare's child protection and children's mental health systems" and many have "a serious emotional disturbance" (p. 32). Further, one judge stated that of the 11 children from his county "currently committed to state custody ... 9 have unaddressed child protection issues" (p. 45). Clearly, there is a correlation between child protection services and confinement in juvenile corrections.

Evaluations of child protection have been piecemeal—they either address child protection with respect to another program, such as juvenile corrections, or they focus on a single aspect of the program. It is time to understand child protection’s place in the state as a whole: how efficient its practices are and how it interacts with other state programs. With this information, we can act more wisely; if a dollar spent on child protection saves three other programs a dollar each, we can, in the name of fiscal prudence, maintain or enhance child protection’s services.

Specifically, my questions for OPE:

1. Explain the nexus between child protection and other areas of state government; can child protection be improved to prevent further advancement into the juvenile justice system?
2. According to the NCSL, over the last 3 years, an average of 30 states have enacted 77 laws addressing Child Protection. What practices, policies, and guidelines are considered best, and how do Idaho’s compare to these?
3. Does the current child protection system comply with all state and federal law?
4. Is the current child protection system, using a mix of county prosecutors and Office of the Attorney General staff, optimal given changes over the last 10 years at both Health & Welfare and the OAG?
5. Discuss policy options for early intervention, and move Idaho away from operating in “crisis mode” in regards to child protective services.
6. Are recommendations from the 2005 OPE report on Child Welfare Caseload Management and its three follow-up reports still relevant and implemented?
7. OPE reported in 2014 that DJC does not have ready access to child welfare data. Are relevant state and county agencies able to share data in order to provide optimal child protective services?

The findings from this report would help ensure that Health and Welfare, the courts, the Department of Juvenile Corrections, and other parties involved are working as efficiently—individually and together—as possible, and it would help us understand the true tradeoffs that we make when making funding decisions regarding child protection.

The ultimate goal is to develop policies which will minimize trauma to children, support the family unit, and lower the societal cost of placing children in child protection services and the juvenile correction system, both of which may have long lasting detrimental effects.



Sincerely yours,



Representative Christy Perry

Representative Mike Moyle



House of Representatives State of Idaho

Evaluation Request For OPE

PROBLEM: Every year state agencies submit their budget requests. Included in many budgets is a line item for replacement items such as computers, monitors, servers, and other IT related products.

It appears that there is not a uniform approach to when IT is requested to be replaced.

MAGNITUDE OF PROBLEM: This seemingly lack of uniformity affects all state agencies and the State of Idaho spends millions of dollars every year on replacement IT related equipment.

DESIRED INFORMATION: Identify what the standard practice is from the various state agencies with regards to the frequency of replacing IT related equipment.

Some of the IT related equipment is purchased with extended warranties ranging with varying term lengths. It would be valuable to know whether or not these extended warranties have a positive return on investment and to know how agencies decide whether to purchase warranties; specifically, which equipment gets an extended warranty and what is the standard length of warranties. How often are these warranties used, and how frequently would a line item replacement have been avoided had a warranty been purchased?

Provide a recommendation with regards to replacement frequency and whether or not warranties should be purchased with IT related equipment and if an extended warranty is recommended, the preferred length of said warranty.

ANTICIPATED USE OF INFORMATION: This information would be useful to determine whether a uniform policy in the frequency of replacing IT related equipment across all state agencies is warranted. If a uniform policy is warranted, this evaluation could provide recommendations shaping such a policy. This information would also be useful in establishing a uniform policy with regards to purchasing extended warranties to ensure that the state is prudently using taxpayer funds.



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Idaho State Senate

SENATOR BERT BRACKETT

March 12, 2015

The Honorable Cliff Bayer, Co-Chair
The Honorable John Rusche, Co-Chair
Joint Legislative Oversight Committee (JLOC)
H A N D D E L I V E R E D

RE: Proposal for Consideration Regarding Idaho's Public Health Districts

Dear Senator Bayer and Representative Rusche,

We are asking that the Office of Performance Evaluations investigate and report on the general issue of Public Health District financing and, in particular, the distribution formula for the districts' general fund appropriation.

The last outside review was in 1993 and was a result of Boise State University, University of Idaho, and Idaho State University examining the issue and making a recommendation that was adopted by the Districts' Board of Trustees. The formula was revised two years ago by the Board of Trustees without external input.

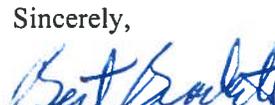
The previous formula considered a number of factors that included population, poverty level, county contribution, and public assistance (Medicaid billing). But that was revised two years ago following the Medicaid contract provider shifting from EDS to Molina. The change resulted in a very different data set (the public assistance component (or need component) was dropped) the revised formula only includes population, poverty, and County contribution.

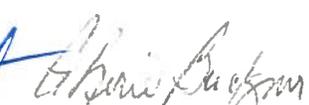
There are also factors that may be considered in the discussion that are more direct indicators of workload placed upon the districts by expectations defined in Idaho Code, such as prevalence of communicable disease and food establishment inspections. Therefore, in addition to account balances in health districts, these other variables need to be identified, considered and reviewed.

The primary purpose of this request is to provide an in-depth, impartial review of the current distribution formula and to develop some alternatives that the Board of Trustees could consider to ensure a more equitable distribution of budgeted general funds to better serve the people of Idaho. The overall goal is to ensure adequate and equivalent resources are available to each District to deliver a core set of local public health services to meet the needs of all the people of the State of Idaho.

In addition, in light of the recent announcement of loss of federal grant funding for STD testing, it may be beneficial for the Office of Performance Evaluations to evaluate what additional demands or requirements the Legislature has placed on the public health districts in recent years.

Sincerely,

 Senator Bert Brackett
Legislative District 23

 Senator Cherie Buckner-Webb
Legislative District 19

 Senator Cliff Bayer
Legislative District 21

 Representative Maxine Bell
Legislative District 25



House of Representatives State of Idaho

To: Joint Legislative Oversight Committee

From: Representative Thomas Dayley

Subject: School Based Medicaid Funding

Date: March 12, 2015

The Individuals with Disabilities Education Act (IDEA) requires schools to provide specialized services to students with special needs. Some of these require individualized medical services.

The Federal Government made a commitment to fund 40% of the costs of this federally mandated program. However, the current federal funding level for this program is around 15%. To supplement the funding of this federally mandated program, provisions were made to allow Medicaid eligible students to access federal funding through the Medicaid program. This funding is at the state FMAP rate, currently approximately 30% Idaho and 70% Federal. It appears state and local education dollars are being used to fund this program where federal dollars are available but not being accessed.

This proposal requests that the Office of Performance Evaluations conduct a general review of the Idaho School Based Medicaid Program in the Idaho Department of Health and Welfare (H&W) and the Idaho Department of Education by answering at least the following questions.

1. How well are Idaho schools accessing the available federal dollars in this program?
 - a. How many program dollars are potentially available to Idaho schools?
 - b. How much program money is being received by Idaho schools?
 - c. How much program money is not being accessed?
 - d. How can Idaho more carefully facilitate access to these federal dollars?
2. What is the Department of Health and Welfare (H&W) estimate of the Idaho School Based Medicaid eligible students and the cost (federal and State) if all eligible students participated in the program? This department annually estimates the total Medicaid eligible Idahoans and reports to the Governor and the Legislature the estimated cost of the program for budgeting purposes. School Based Medicaid students are a component of that total.
3. What caused the dramatic fluctuation of these program dollars in Idaho?
School-base Medicaid Payments were \$7.1M in 2004, \$35.2M in 2010 and \$26.8 M in 2014.
4. Why have some schools dropped out of this program? Of the 175 school districts, 140 have signed agreements with the Medicaid Division to participate. Many districts have either dropped out or dramatically reduced participation in the program.

5. How have the audits of this program been conducted?
 - a. What are the primary audit exceptions?
 - b. How many of the audit exceptions were for legally defined reasons?
 - c. How many audit exceptions were based on lack of knowledge or clerical type errors?
 - d. Were there any exceptions based exclusively on fraud?
6. How have the penalties for violations in this program been administered?
 - a. What are the reasons for penalties imposed (numbers, reasons, penalty dollars, etc) upon school based providers?
 - b. What are the reasons for the penalties imposed (numbers, reasons, penalty dollars, etc) upon all providers?
 - c. How does the School Based Program provider penalty numbers compare to all of the Idaho program providers (numbers, reasons, penalty dollars)?
7. Where does the penalty money go in the Department of Health and Welfare and how is it accounted for and used? Was it used for training or for what other purpose? The Department of Health and Welfare has collected more than \$2M in penalties between FY2010 and 2014.
8. Are best practices being identified and coordinated? How?
9. What training mechanisms are in place at H&W and Education? And how are these coordinated between the agencies? How is the effectiveness of training measured? Are the agencies training regimes adequate?
10. Is a technical guide book available for local providers to help eliminate errors? How is its use monitored?
11. Does the interagency MOU provide sufficient direction to the agencies?
An MOU between Department of Education and Department of Health and Welfare was signed in 2014. Questions have been asked about its compliance with federal and state law, regulation and rule or if it provides sufficient direction to the state and local program entities.
12. How does the Idaho program compare to other States?
 - a. Participation in the program?
 - b. Access to federal dollars?
 - c. Training?
 - d. Auditing?
 - e. Any other items found?

It is anticipated that the information in this study can and will be efficiently used to assist the Department of Education and the Department of Health and Welfare to work together more effectively to administer the School Based Medicaid Funding Program in Idaho. This study will also provide additional information to the Legislature for use as it makes policy decisions regarding this program.

Thank you for your consideration,

