

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 23, 2014

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt

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 Heider** called the meeting to order at 3:01 p.m., and welcomed the audience. He stated that there was a quorum present and that the meeting could get started.

PASSED THE GAVEL: **Chairman Heider** stated that since we were discussing rules, he would turn the gavel over to Vice Chairman Nuxoll.

DOCKET NO. 16-0506-1301 **Rules relating to Criminal History and Background Checks (Pending Fee):** **Fernando Castro**, Supervisor for the Criminal History Unit, Bureau of Audits and Investigations, Department of Health and Welfare, thanked the Committee for the opportunity to present this pending rule. He stated it regards criminal history and background checks for certain persons. He stated that the rule change was adopted to coincide with statutory requirements that became effective July 1, 2013 and adds new statutory references, as well as identifies a new class of individuals who are required to submit the Department's background check. **Mr. Castro** stated that when the Legislature adopted H 125 it authorized the Department to conduct criminal history and background checks on persons who are seeking to be appointed by the state courts as guardians or conservators of incapacitated or developmentally disabled adults. He stated that persons who resided with vulnerable adults were also subject to background checks and that there was no cost to the State since the individual was the party financially responsible for the investigation. **Mr. Castro** stated that the Department anticipated 700 background checks of this type during the 2014 fiscal year (FY) and this represents approximately \$45,500 in receipts for the Department that will cover the costs of these background checks.

Senator Schmidt inquired into the amount of the cost for the individual background check to which **Mr. Castro** responded that it was \$65 per person.

Vice Chairman Nuxoll asked **Mr. Castro** to explain the process of the background check.

Mr. Castro stated that they will be directed to the Department's website to register as applicants online. Upon completion of the application, they will be asked to make an appointment for fingerprinting. If the applicant is unable to come to the Department, they will be allowed to mail in fingerprint materials. The fingerprints will be reviewed against established criteria and sent to the State Police for comparison against the Idaho State Criminal Files, and then the prints are sent to the federal files at the Federal Bureau of Investigation (FBI). After the FBI analysis is complete, they will notify the Department and the State Police if the applicant has a criminal record, which is reviewed by the Department for disqualifying criteria. He stated that the Department does not make a pass or fail determination, but rather a report for the courts to decide on the fitness of the individual for guardianship.

Vice Chairman Nuxoll inquired about the delays for background checks.

Mr. Castro stated that there are challenges in getting people into appointments as there are a limited number available, due to lack of personnel. He said that for this particular type of background check, there is no time requirement for the applicants to submit materials. He said once the fingerprints are received, the Department is able to clear an individual in six to seven business days after the report for the FBI returns. **Vice Chairman Nuxoll** asked how long it took to receive the report from the police department. **Mr. Castro** replied that the Department does not have a partnership with law enforcement and that they handle the fingerprints through internal channels.

Senator Bock asked if the House bill specifically stated that the Department of Health and Welfare was the agency assigned the duty of conducting the background checks. **Mr. Castro** replied that the statute did specify that the Department of Health and Welfare was assigned the responsibility of the background checks.

Senator Guthrie asked if the guardian and conservatorships were done pro bono, to which **Mr. Castro** responded that he did not have that information. **Senator Bock** said that some were volunteers and some were compensated, but he doubted there would be a significant negative impact on those individuals willing to act as guardians or conservators.

MOTION:

Senator Hagedorn moved, seconded by **Senator Martin**, to approve **Docket No. 16-0506-1301** as written. The motion carried by **voice vote**.

**DOCKET NO.
16-0506-1302**

Rules relating to Criminal History and Background Checks (Pending): **Mr. Castro** stated that the Criminal History Unit completes 23 background checks a year, which screen employees of providers and individuals that participate in Department programs such as foster care, adoption and certified family homes. He stated that each year, approximately 300 applicants are either denied or voluntarily withdrawn due to disqualifying elements in their background checks. He stated that this pending rule change was simply a maintenance and clarification effort, which was the culmination of a year of internal review. He summarized the proposed changes as additions to requirements that providers must complete when acquiring facilities with employees that must submit to background checks. He stated that there are clarifications to the process of submitting application materials and fingerprints as well as when an applicant is cleared on a probationary status to begin employment. **Mr. Castro** said that a "no-show" fee was left inadvertently in the document and he ensured the Committee that the fee would not be assessed and the language would be omitted next year. He stated there was a clarification on when a Department clearance can be revoked or suspended and on the appeal process for applicants who have been unconditionally denied. **Mr. Castro** concluded by explaining there was an addition of deadlines for applicants to present materials when their cases are pending with the court. He asked that the changes be approved on the basis they would improve the usefulness of the program's protection of vulnerable populations who the Department safeguards.

Senator Bock inquired if there was a statute that would allow them to omit the error, to which **Dennis Stevenson**, Rules Coordinator, responded that he could make non-substantive changes.

Vice-Chairman Nuxoll asked if the change was going to be immediate or presented next year. **Mr. Castro** responded that it would be next year due to other changes that were required to be made.

Senator Lakey stated that he previously voted against rules that included a list of crimes that disqualified applicants and asked if the Department would consider adding felony drug distribution. **Mr. Castro** stated that the Department would entertain the idea.

MOTION:

Senator Bock moved, seconded by **Chairman Heider**, to approve **Docket No. 16-0506-1302**. The motion carried by **voice vote**.

**DOCKET NO.
16-0507-1301**

Rules relating to the Investigation and Enforcement of Fraud, Abuse and Misconduct (Pending): Benjamin Johnson, Supervisor of the Welfare Fraud Investigations Unit (Unit), Department of Health and Welfare, stated that his team investigates fraud within the welfare programs, but not Medicaid providers. He said that in FY 2010, the Department began a proactive process of developing fraud leads through data analytics. **Mr. Johnson** said that in the first year, they received 58 leads; however, as more data has been obtained, they have received over 20,000. He stated that the average number of cases that an investigator closes with an overpayment, program sanction or prosecution has increased from 50 cases in 2010, to 250 cases in 2014. He reported that last year, for the first time in the Unit's history, they recovered more than their total cost. He said that over the last two years, the Unit has expanded their efforts to investigating providers of all public assistance programs, such as food stamp retailers and day care providers. He stated that, as a result, they have found inconsistencies with the state law and administrative rule as it relates to providers of public assistance programs. He said the primary purpose of the docket is to update administrative rules and definitions and align them with state statute and that the recommendation has no anticipated fiscal impact. **Mr. Johnson** stated that the current IDAPA 16-0507, the Investigation and Enforcement of Fraud, Abuse and Misconduct, only references enforcement of medical providers under the Medicaid program. He stated that the corresponding Idaho codes 56-209H, Administrative Remedies, clearly references enforcement on any provider under any public assistance program. He stated that the administrative rule language limits the scope of enforcement to only Medicaid providers. Consequently, the Department is recommending that IDAPA 16-0507 be updated to reflect language found in Idaho code 56-209H for the following reasons: to demonstrate consistency in the rules; to avoid confusion with public assistance provider fraud cases and to increase accountability for all public assistance programs.

Vice Chairman Nuxoll inquired about the circumstances that led the Department to find the inconsistencies. **Mr. Johnson** responded that when they began to look at providers of all public assistance two years ago, they referenced both the statutes and the administrative rules and subsequently recognized the inconsistency.

Senator Schmidt asked if Medicaid fraud would be included in the changes to the rule. **Mr. Johnson** responded that the unit investigates all public assistance providers other than Medicaid, and that there is a separate entity for Medicaid investigations. He said that the change to the rules encompasses all public assistance programs, which includes Medicaid. **Senator Schmidt** asked if they changed whether payments can be suspended and if that applied to Medicaid. **Mr. Johnson** replied that Senator Schmidt was correct.

Senator Hagedorn asked if the Medicaid Fraud Unit was created in statute and stated that he was concerned with "mission creep," or the tendency for one unit to encroach on the mission of another without the authority of statute, and asked if it would be better to include the Welfare Fraud Investigation Unit in statute. **Mr. Johnson** responded that he would be open to the idea, and stated that they are already included in the statute and that the rules update would address Senator Hagedorn's concern. **Senator Hagedorn** asked how the courts and prosecutor were keeping up with the exponential increase in cases. **Mr. Johnson** responded that the prosecutions had not increased because there is a dollar threshold that must be exceeded before they are sent to the prosecutor's office, and a high percentage of cases are handled by the unit.

MOTION: **Chairman Heider** moved, seconded by **Senator Bock**, to approve **Docket No. 16-0507-1301**. The motion carried by **voice vote**.

Vice Chairman Nuxoll said that although it was late, she would like the person who came to testify on a previous docket, **Docket No. 16-0506-1301**, to come forward and speak.

Christine Pisani, Executive Director of the Idaho Council on Developmental Disabilities (an organization that advocates for Idaho citizens with developmental disabilities to live successful lives in their communities) stated that she would like to share some of the results of the legislation, as she believed that it was working in the way that it was intended. She stated that she appreciated the Committee's work in this important area.

DOCKET NO. 16-0601-1302 **Rules relating to Child and Family Services (Pending Fee): Rob Luce**, Administrator for the Division of Family and Community Services, stated that this rule clarifies certain processes in the child welfare program with the expectation of improving safety, wellbeing and outcomes for children and families in Idaho. He stated that with these changes, the Department is establishing a process for individuals to obtain confidential information on the child protection central registry. He said that the information would be released to the individual in question, and only with that individual's prior written consent to obtain the confidential information. **Mr. Luce** stated that the change was consistent with current practice and eliminated the need for a work-around necessitated by the current wording in the rule. He continued by stating that the Department is not mandating that individuals or entities check the registry as a precondition for employment or non-department licensure. He also stated that with this change, the Department is not expanding access to highly confidential information. He stated that updates were being made to the Indian Child Welfare Act, particularly the process of using registered mail return receipt requests.

MOTION: **Senator Hagedorn** moved, seconded by **Senator Guthrie**, to approve **Docket No. 16-0601-1302**. The motion carried by **voice vote**.

DOCKET NO. 19-0101-1301 **Rules for the Idaho State Board of Dentistry (Pending Fee): Susan Miller**, Executive Director of the Board of Dentistry (Board), stated that the Board undertook the task of reviewing their entire chapter of rules to ensure that they reflect current licensing and practice standards for dental professionals. **Ms. Miller** stated that the Board is proposing a reduction in the fee for a dentist application by credentials from \$600 to \$300. She outlined the change in Rule 40, in which the Board is proposing two additions to the Unprofessional Conduct Rules for dentists and dental hygienists. The additions are failure to provide patient records to patients and failure to cooperate with authorities. **Ms. Miller** said that there were a steady number of advertising complaints. She outlined the change to Rule 50, which concerns the Board's proposal to reduce the number of continuing education credits required for renewal of an extended access dental hygiene license endorsement. Current rules require twelve hours and the Board is proposing to reduce the number

to four. The Board felt this was a more reasonable number when combined with the 24 credits required for a dental hygiene license.

Ms. Miller explained the change to Rule 55, which concerns minimal sedation in children. The current rules are silent on children and establishing a standard is necessary for public protection. The Board has a standing committee of experts who provided recommendations for this standard. She then outlined the changes to Rule 60, in which the Board proposed a change to the renewal requirements for moderate enteral and moderate parental sedation permits by specifying the requirement to maintain certification in basic life support for health care providers or advanced cardiac life support based on the level of permit. These certifications are required by rule in order to obtain a permit, but the requirement for maintaining current certification is presently in policy.

Chairman Heider inquired about the words "in a dental office" and asked if those procedures were done in hospitals or operating centers. **Ms. Miller** responded that it was specified for minimal sedation, and the settings that Chairman Heider mentioned would typically be a higher level of sedation.

Senator Martin thanked the Board for reducing the fees and asked the balance of the funds. **Ms. Miller** responded that their FY 2013 ending balance was just over \$1 million and their annual budget is around \$400,000.

Senator Hagedorn asked if the words "to include" should be added to the nitrous equipment section of the rule change. **Ms. Miller** replied that it could be corrected, if necessary.

MOTION: **Senator Martin** moved, seconded by **Senator Lakey**, to approve **Docket No. 19-0101-1301**. The motion carried by **voice vote**.

DOCKET NO. 22-0103-1301 **Rules for the Licensure of Physician Assistants (Pending): Nancy Kerr**, the Executive Director for the Idaho State Board of Medicine, stated that this rule was adopted as a temporary rule by the Board to comply with changes passed by the Legislature in 2013 for the Board of Pharmacy regarding dispensing of medication. She said that the rule eliminates the section of the rules regarding the dispensing of medication by physician assistants and requires compliance with the Board of Pharmacy laws and rules.

MOTION: **Senator Hagedorn** moved, seconded by **Senator Lodge**, to approve **Docket No. 22-0103-1301**. The motion carried by **voice vote**.

DOCKET NO. 22-0113-1301 **Rules for the Licensure of Dietitians (Pending): Nancy Kerr** stated that this rule was adopted as a temporary rule by the Board. Licensees were notified and it was published without comments received. She explained that the rule reflects the new name of the Dietitian Education Accrediting Agency and corrects a code citation relating to disciplinary authority.

MOTION: **Senator Schmidt** moved, seconded by **Senator Guthrie**, to approve **Docket No. 22-0113-1301**. The motion carried by **voice vote**.

PASSED THE GAVEL: Vice Chairman Nuxoll passed the gavel back to Chairman Heider.

ADJOURNED: There being no further business at this time, Chairman Heider adjourned the meeting at 3:59 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary

David Ayotte
Assistant Secretary