

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, February 13, 2018

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Agenbroad, Foreman, Potts, and Jordan

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 of the Health and Welfare Committee (Committee) to order at 3:01 p.m.

APPROVAL OF MINUTES: **Senator Martin** moved to approve the Minutes of January 24, 2018. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

H 0353 **Volunteer Health Care Providers.** **Ken McClure** spoke on behalf of the Idaho Medical Association. **Mr. McClure** stated this bill would provide limited immunity for physicians and other health care providers who participate in community health screening events. Community health screening events are sponsored by a church, civic club, high school, or similar entity and provide health screenings to the public. Because Idaho has so few physicians per capita, community health screening events play a critical role.

H 0353 grants limited immunity to health care providers who volunteer at community health screening events, given that the patient signs a limited liability form. **Mr. McClure** clarified this bill applies to screening events only, not treatment.

DISCUSSION: **Chairman Heider** noted physicians have participated in community health screenings without limited immunity. He asked why this bill is necessary. **Mr. McClure** explained many independent physicians are transitioning into employment within health systems and hospitals. Independent doctors generally have a malpractice insurance policy that covers them in any practice setting. Physicians working within a health system or hospital have malpractice insurance through their employers. This malpractice insurance only applies to the employer's patients, and not to patients seen at volunteer events. A lack of malpractice coverage at community health screening disincentivizes physician participation.

Senator Jordan asked if this bill would apply to volunteer dental events. **Mr. McClure** stated this bill could apply to dental events if the events only involve screening, not treatment.

Senator Jordan noted the bill does not offer immunity for physicians who have committed grossly negligent acts. She asked for the definition of gross negligence. **Mr. McClure** explained gross negligence is an extreme deviation from the standard of care. He clarified that a simple mistake could be considered simple negligence, but would be unlikely to be considered gross negligence. **Senator Jordan** asked if gross negligence can realistically occur in a screening setting. **Mr. McClure** stated it can, but it is unlikely.

MOTION: There being no more testimony or questions, **Senator Potts** moved to send **H 0353** to the floor with a **do pass** recommendation. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**. Senator Lee will carry the bill on the floor of the Senate.

H 0337 **Behavioral Health Council and Boards.** **Ross Edmunds** introduced himself as the Administrator for the Division of Behavioral Health within the Idaho Department of Health and Welfare (DHW). This bill would make the following changes: 1.) add definitions of provider categories to Idaho Code; 2.) add a prevention specialist position to the Idaho Behavioral Health Planning Council and the Regional Behavioral Health Boards; and 3.) clarify language relating to the appointment of Regional Behavioral Health Board members.

DISCUSSION: **Senator Foreman** expressed concern that this bill would require support service providers to undergo training in order to become certified. He noted many individuals who provide support services have useful life experience, but may not have sufficient time or money to undergo training. **Mr. Edmunds** explained this bill would not prohibit anyone with life experience from providing support. However, in order for the State to reimburse someone for their support services, the individual must undergo training and be certified. **Mr. Edmunds** noted the training course is only one week and scholarships for the course are available.

Senator Potts expressed concern that requiring training is a burden to support service providers. **Mr. Edmunds** reiterated this bill would not prohibit anyone with life experience from providing support. Training is only required in order for State reimbursement.

Senator Harris asked if a similar bill was introduced during the 2017 Legislative Session. He asked if counties have provided input regarding this bill. **Mr. Edmunds** confirmed a similar bill failed during the 2017 Legislative Session. He stated feedback on the previous bill was incorporated into **H 0337**.

Vice Chairman Souza expressed concern that Regional Behavioral Health Boards must each have three county commissioners, as some counties only have three commissioners. She noted it is unrealistic to expect all of a county's commissioners to sit on the same board, given their busy schedules. **Mr. Edmunds** clarified that each Regional Behavioral Health Board will include three county commissioners from the region, not from each county.

MOTION: There being no more testimony or questions, **Senator Jordan** moved to send **H 0337** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senator Potts** and **Senator Foreman** voted **nay**. Senator Jordan will carry the bill on the floor of the Senate.

H 0339 **Pharmacy, Drug Substitutions.** **Alex Adams** introduced himself as the Executive Director of the Idaho Board of Pharmacy (BOP). **Dr. Adams** indicated this bill would allow limited therapeutic substitution of drugs within the same therapeutic class. He noted this practice is common in health care facilities in Idaho; however, current Idaho law prohibits the practice in outpatient settings. **H 0339** would allow therapeutic substitution if the following criteria are met: 1.) the patient's physician must opt into the substitution; 2.) the substitution must be in compliance with the patient's health plan formulary; and 3.) the patient must agree to the substitution. The bill would prohibit substitution of high-risk drugs.

DISCUSSION: **Senator Potts** asked if brand-generic substitution is currently illegal. **Dr. Adams** stated brand-generic substitution is legal. He explained **H 0339** does not address brand-generic substitution. This bill addresses drug substitution within a therapeutic class. **Senator Potts** sought information regarding the management of side effects caused by drug substitutions. **Dr. Adams** stated this is why the previously mentioned criteria must be met. The physician and patient must agree to the substitution. **Dr. Adams** asserted an individual's prescribed drug may not be covered by Medicaid, while a substitute drug is. This bill will allow Medicaid recipients to access necessary medication without waiting for their physician to issue a new prescription.

Senator Jordan asked when a patient would agree to the substitution. **Dr. Adams** stated a patient would most likely agree to the substitution at the pharmacy. The pharmacist would discuss a possible drug substitution with the patient, and the patient would decide whether to allow the substitution. **Senator Jordan** expressed concern that a patient may feel pressured to agree to a drug substitution. She asked how to ensure this does not occur. **Dr. Adams** noted this bill was modelled after similar legislation from other states. In other states, the legislation is effective. Pharmacists are required to counsel patients when dispensing the initial prescription. **Dr. Adams** stated the conversation regarding drug substitution would naturally occur during such counsel.

MOTION: There being no more testimony or questions, **Senator Harris** moved to send **H 0339** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**. Senator Harris will carry the bill on the floor of the Senate.

H 0340 **Controlled Substances.** **Dr. Adams** indicated this bill would update Idaho's Controlled Substances Act to reflect the Drug Enforcement Administration's scheduling of acetyl fentanyl and dronabinol. He mentioned the bill also streamlines and modernizes several sections of the Controlled Substances Act. These updates do not add any new regulatory requirements; instead, they clarify existing requirements for issuing, distributing, and dispensing controlled substances in compliance with federal law.

This bill would also remove the requirement for pharmacists to be involved in the process of dispensing drugs in opioid treatment programs. This requirement is not included in federal law.

DISCUSSION: **Vice Chairman Souza** sought more information regarding the role of pharmacists in opioid treatment programs. **Dr. Adams** explained that opioid treatment programs must involve a pharmacist in the process of dispensing drugs to patients. This bill would eliminate this requirement, as it is a burden to opioid treatment programs.

MOTION: There being no more testimony or questions, **Vice Chairman Souza** moved to send **H 0340** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Vice Chairman Souza will carry this bill on the floor of the Senate.

H 0351

Pharmacy, Licensing and Registration. Dr. Adams explained this bill updates and modernizes Idaho's Pharmacy Practice Act and is complementary to the BOP's comprehensive rewrite of administrative rules. Dr. Adams noted this bill modernizes definitions and eliminates obsolete licenses and licensing requirements. **H 0351** would eliminate the requirement for student pharmacy technicians to be fingerprinted; student pharmacy technicians are individuals between 16 and 18 years of age who are in a supervised school program. **Dr. Adams** stated this will save each student pharmacy technician \$32 per year. In addition, **H 0351**: narrows the definition of veterinary drug outlets; eliminates temporary reciprocity licensure; allows over-the-counter medication to be sold at locations without a BOP license; limits the powers and duties of the BOP; clarifies that the BOP can receive grants and sponsor educational programs; removes statutory cap on license fees; consolidates pharmacist and controlled substance licenses.

MOTION:

There being no testimony or questions, **Senator Harris** moved to send **H 0351** to the floor with a **do pass** recommendation. **Senator Potts** seconded the motion. The motion carried by **voice vote**. Senator Harris will carry this bill on the floor of the Senate.

PRESENTATION:

Licensing and Certification of Residential Care Performance Evaluation Report. Rakesh Mohan, Director of the Office of Performance Evaluations (OPE), explained OPE discovered a dysfunctional work environment within the Nursing Home Survey Team within the Department of Health and Welfare (DHW). OPE informed Russell Barron, Director of the DHW, who immediately began investigating the issue.

Ryan Langrill noted the Division of Licensing and Certification (DLC) within DHW fell behind on nursing home and assisted living surveys. As a result, new nursing homes waited 18 months to receive initial certification. Until receiving certification, these facilities cannot receive Medicaid or Medicare payments, which are nursing homes' primary source of payment. Idaho nursing homes also expressed concern that DLC surveys are excessively strict and punitive. **Mr. Langrill** provided details about the nursing home survey process. He stated there was a dysfunctional work environment within the Nursing Home Survey Team, which led to a dysfunctional survey culture. He noted the dysfunctional environment did not extend to the Assisted Living Facility Survey Team. Providers alleged that members of the Nursing Home Survey Team berated and belittled them and attempted to instill fear in providers.

Mr. Langrill mentioned the Nursing Home Survey Team had many vacancies, leading to a staff shortage and a backlog of surveys and certifications. DHW utilized contract surveyors in order to eliminate the backlog. **Mr. Langrill** noted Idaho's nursing home citation rates are above the national average, but are not cause for concern. Factors such as the Centers for Medicare and Medicaid Services' inconsistent oversight across the United States affect Idaho's citation rates. New federal mandates are expected to align Idaho's future citation rates with the national average. **Mr. Langrill** commented that OPE will conduct a follow-up investigation of the Nursing Home Survey Team in three months.

Mr. Langrill stated the Assisted Living Facility Survey Team did not have a dysfunctional work environment; providers reported a high level of confidence in the team. However, the Assisted Living Facility Survey Team had 67 overdue surveys in December 2017. DLC cannot hire contract surveyors to complete assisted living facility surveys, so it has relied upon temporary employees to address the survey backlog. Temporary employees are limited to eight months of employment. Temporary employees who are not trained surveyors must undergo a six-month training process. **Mr. Langrill** stated that temporary surveyors model

has overextended DLC's training resources and negatively affected team morale.

Providers also reported concerns about the Assisted Living Facility Survey Team's inconsistent interpretation of rules. **Mr. Langrill** indicated assisted living facilities cannot dispute all citations. OPE recommended DLC develop a dispute resolution process that encompasses all citations.

Tony Grange noted the number of residential care beds in Idaho is decreasing while the demand for those beds is increasing. He stated Idaho is very focused on assisted living facilities; Idaho has more assisted living facility beds per capita than comparison states, which include Washington, Oregon, Montana, Wyoming, and Utah. Idaho's assisted living facilities are also smaller and more likely to be located in rural counties than assisted living facilities in comparison states. Medicaid policies vary by provider. **Mr. Grange** noted some small assisted living facilities have been closing and the percentage of Medicaid residents is decreasing. The facilities that have closed disproportionately served Medicaid residents and mentally ill residents. **Mr. Grange** stated complex behaviors can make Idaho providers reluctant to admit applicants. He asserted providers in other states show less reluctance to admit residents with such behaviors. OPE also conducted a survey which showed that Idaho has lower Medicaid reimbursement rates than comparison states.

Mr. Grange stated two DLC surveyors conduct surveys for 30 children's residential facilities. These surveys differ from nursing home and assisted living surveys in that they are conducted by a single surveyor and are scheduled, not unannounced. Surveys are conducted annually, and there is no exemption for exemplary facilities. Providers indicated they are generally satisfied with the survey process, but expressed concern that the surveys are staff-intensive. **Mr. Grange** stated DLC is considering using a shorter application process based on past compliance in order to decrease the burden on providers.

Mr. Grange explained psychiatric residential treatment facilities serve individuals under 21 years of age in an inpatient setting. These facilities must meet federal requirements to be certified. Idaho does not certify these facilities, and the Idaho Medicaid plan does not cover them. Because Medicaid is required to cover medically necessary care for children, Idaho children on Medicaid are sent out-of-state to receive the treatment provided at psychiatric residential treatment facilities. In 2017, Medicaid sent 22 children out-of-state for treatment.

Mr. Grange recommended the children's residential team develop criteria for extended licensure and evaluate options for certifying psychiatric residential treatment facilities so children can be served in-state.

Mr. Langrill recommended collecting license fees from assisted living facilities and nursing homes. He noted these fees would provide a steady source of revenue. Comparison states charge varying amounts for license fees. **Mr. Langrill** emphasized the importance of collaboration between DLC and providers.

DISCUSSION: **Senator Agenbroad** asked for the definition of an overdue survey. He also asked how many surveys are currently overdue. **Mr. Langrill** stated CMS requires states to survey nursing homes every 15 months and maintain a statewide average of 12 months. However, there are no such requirements for initial certifications, which makes initial certifications a lesser priority when DLC falls behind on surveys. **Tamara Prisock** introduced herself as the DLC Administrator. She stated there are currently no overdue nursing home surveys.

Senator Martin asked how many assisted living surveys are overdue. **Mr. Langrill** stated assisted living facilities must be surveyed every year. If a facility does not receive any major citations for two consecutive years, the survey requirement can be extended to every three years. There are currently around 67 overdue surveys. **Senator Martin** noted that individuals in assisted living facilities may fall, lash out, or hit others. He asked how this affects a provider's survey. **Mr. Langrill** stated it would depend upon the context of the incident. For example, if a facility failed to follow rules regarding the prevention of falls, it would receive a citation. However, if a fall occurs, but there is no rule violation, the facility would not receive a citation.

Senator Lee asked if DLC is currently behind on certifying new facilities. She noted facilities cannot receive Medicaid reimbursements until they are licensed. **Ms. Prisock** stated new assisted living facilities are licensed immediately after the application process. She asserted initial surveys are completed quickly and a follow-up survey is conducted six months later. **Ms. Prisock** explained initial State licensing of nursing homes is a quick process. State-licensed nursing homes can admit residents, but must wait for federal certification before receiving Medicaid and Medicare reimbursements. Once a State license is issued and the facility can demonstrate the care it provides, DLC places the facility on the survey schedule.

Senator Lee sought information regarding the average delay between placing a facility on the survey schedule and completing the survey. **Ms. Prisock** stated facilities are placed on the survey schedule, but complaints and urgent recertification needs can disrupt the survey schedule. **Senator Lee** asked if it is common for a facility to wait four months before being surveyed. **Ms. Prisock** stated this is not common.

Senator Martin inquired as to why assisted living facilities cannot dispute citations. **Mr. Langrill** stated if there is an enforcement action, the facility can go through an administrative appeals process. If there is a core citation (citations for abuse, neglect, exploitation, etc.), a dispute resolution process is available. However, there is no resolution or appeal process for non-core citations. **Senator Martin** asked why there is no formal resolution for non-core citations. **Mr. Langrill** recommended that DLC develop a resolution process for such citations.

Senator Agenbroad explained that a facility received a letter from DLC stating the facility would have to wait 18 months before receiving a license. The facility then received a letter stating it would have to wait 12 months. He asked if this is a normal course of procedure. **Ms. Prisock** stated this occurrence is not normal.

Senator Lee asked how OPE will determine the success of efforts to improve the work environment among the nursing home survey team. **Mr. Langrill** stated OPE will follow-up with individuals who previously expressed concerns to determine whether the work environment has become more professional. **Mr. Mohan** explained OPE will: speak with Director Barron regarding his efforts to solve the issue; speak with the nursing home survey team regarding the work environment; and speak with the personnel department at DLC and other stakeholders regarding the problems. He noted OPE may conduct a survey or hold one-on-one interviews

with DLC staff.

Vice Chairman Souza sought information regarding the required background for surveyors, the pay rate for surveyors, and the average turnover rate for surveyor positions. She asked why there are so many surveyor vacancies at DLC. She also inquired as to the difference in cost between a full-time surveyor and a contract surveyor. **Vice Chairman Souza** then expressed concern regarding the recommended licensing fees for providers. **Mr. Langrill** explained most surveyors are registered nurses (RNs) with previous experience in long-term care, although some have different backgrounds. The median salary for a surveyor in Idaho is \$65,000 per year, which is equivalent to the median salary for surveyors in other states. **Mr. Langrill** stated only two surveyors on the nursing home survey team had held the position for more than two years. The assisted living survey team does not have a high turnover rate. **Mr. Langrill** also noted contract surveyors did not cost DLC additional money.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 4:46 p.m.

Senator Heider
Chair

Rachel Goodman
Secretary