

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 14, 2018

TIME: 3:00 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Senator Harris

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 to order at 3:03 p.m.

APPROVAL OF MINUTES: **Senator Foreman** moved to approve the Minutes of January 25, 2018. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**.

Senator Agenbroad moved to approve the Minutes of January 30, 2018. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

S 1271 **Health Care Organizations.** **Kris Ellis** spoke on behalf of the Idaho Health Care Association. This legislation would add assisted living and residential care facilities to the existing peer review statute. The purpose of the peer review statute is to encourage quality improvement through patient safety investigations and analyses, root cause analyses, and adverse outcome reviews. This legislation would allow assisted living staff who participate in the peer review process to speak freely and know they are immune from liability. It would also ensure the confidentiality of the peer review records.

DISCUSSION: **Senator Jordan** asked if assisted living facilities and residential care facilities are defined similarly in Idaho Code. **Ms. Ellis** stated this legislation consistently refers to such providers as residential care facilities.

Chairman Heider asserted that different teams inspect assisted living facilities and residential care facilities. He asked Ms. Ellis to explain the difference. **Ms. Ellis** explained that nursing home surveyors are directed by the federal government, whereas assisted living facility surveyors are regulated by the State. She stated this legislation would allow assisted living facilities to identify the root cause of any problems without being punished.

TESTIMONY: **Mike Sharp** spoke on behalf of Edgewood Healthcare, which operates ten assisted living communities throughout Idaho. He stated Edgewood Healthcare supports **S 1271** because it allows assisted living facilities to participate in the peer review process.

MOTION: There being no more testimony or questions, **Vice Chairman Souza** moved to send **S 1271** to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. Vice Chairman Souza will carry the bill on the floor of the Senate.

H 0347

Ombudsman for Elderly, Reporting. **Cathy Hart** introduced herself as the State Long-Term Care Ombudsman for the Idaho Commission on Aging. **Ms. Hart** stated federal law authorizes the Ombudsman Program, which advocates for nursing home and assisted living facility residents. The State Long-Term Care Ombudsman manages six local ombudsman programs in Idaho. The programs collectively serve over 15,000 residents.

Ms. Hart stated this legislation would: clarify that retaliation against a resident or other person filing a complaint with the Ombudsman Program is prohibited; grant the program permission to enter a long-term care facility at any time to investigate a complaint; clarify that the Ombudsman Program is separate and distinct from the Idaho Commission on Aging; state that the program will work to resolve complaints to the satisfaction of the resident or the resident's representative; clarify that client or complainant information can only be released with resident permission or court order; require the program to notify the resident or personal representative of any action taken on their behalf; and remove the program from the list of mandatory reporters of abuse, neglect, or exploitation of a vulnerable adult. This legislation would have no fiscal impact.

DISCUSSION:

Senator Lee asked what would occur if a complaint is not resolved to the satisfaction of the resident or the resident's representative. **Ms. Hart** stated the Ombudsman Program's ultimate goal is to resolve issues to the best of its ability. In the process of investigating complaints, the program educates residents about the importance of bringing in other people to resolve the issue. Residents are often afraid of retaliation, which can make them reluctant to pursue a resolution. **Senator Lee** asserted the proposed legislation creates liability by stating the program will resolve complaints to the satisfaction of the resident. **Ms. Hart** noted some issues are not solved to the satisfaction of the client.

Senator Martin also expressed concern about the addition of the phrase "to the satisfaction of the resident." He sought more information about the source of the phrase. **Ms. Hart** stated the language came directly from the Older Americans Act. **Chairman Heider** explained the proposed legislation states the Ombudsman program "will work to resolve" issues to the resident's satisfaction; it does not state the program "must resolve."

Senator Potts expressed concern that this bill does not mention working with a nursing home or assisted living facility to resolve issues. He stated allowing the program to enter a facility at any time could lead to staffing issues at the facility. **Senator Potts** also expressed concern that this bill discusses verbal notification, but not written notification. **Ms. Hart** stated it is not the Ombudsman's intent to be an adversary to facilities. The program works closely with facilities while also being mindful of a resident's fear of potential retaliation. **Ms. Hart** noted it is necessary for the program to have 24-hour access to facilities, as problems may arise after-hours or on the weekend. She stated the program is mindful of staffing issues. **Ms. Hart** clarified the program can provide information in writing. **Senator Potts** expressed concern that this bill does not reflect the program's willingness to work with facilities.

Senator Foreman asked if granting the program the ability to enter a facility at any time violates the Fourth Amendment to the United States Constitution. **Ms. Hart** stated the program has never come into conflict with the Fourth Amendment. She clarified the program does not search facilities; the program investigates issues surrounding resident complaints. **Senator Lee** asked if this is why the Ombudsman Program would be removed from the list of mandatory reporters of abuse and neglect. **Ms. Hart** responded in the affirmative.

- MOTION:** There being no more testimony or questions, **Senator Lee** moved to send **H 0347** to the floor with a **do pass** recommendation. **Vice Chairman Souza** seconded the motion.
- DISCUSSION:** **Senator Martin** asserted the language of the bill was appropriate. **Senator Lee** expressed concern, but also stated any issues that arise can be addressed by the Committee during the 2019 Legislative Session. **Senator Potts** expressed concern the language is too extreme.
- VOICE VOTE:** The motion carried by **voice vote**. **Senator Potts** and **Senator Foreman** voted **nay**.
- PRESENTATION: Department of Health and Welfare Budget.** **Russ Barron** introduced himself as the Director of the Idaho Department of Health and Welfare (DHW). **Director Barron** stated the recommended DHW budget for fiscal year (FY) 2019 is \$3.14 billion. Federal funds account for 62 percent of the 2019 budget, and funds derived from the General Fund account for 25 percent. The total budget increase for FY 2019 is 9.97 percent. **Director Barron** stated the increase is caused primarily by: Medicaid caseload, utilization, and mandatory cost increases; reduction in hospital cost settlements; and a federal medical assistance percentage (FMAP) adjustment.

Nearly 86 percent of the DHW budget for FY 2019 goes to private service providers; the majority of this category covers Medicaid services. **Director Barron** noted the other portions of the DHW budget are for administrative costs. DHW attempts to keep such costs as low as possible. The FY 2019 budget recommendation includes the addition of 13 full-time positions within DHW. **Director Barron** referenced a chart showing the budget distribution among the various divisions within DHW (see Attachment 1). The Division of Medicaid receives 81 percent of the overall budget and provides medical coverage for over 300,000 Idahoans. Medicaid enrollment in Idaho continues to grow, but DHW's Medicaid costs have increased at a lower rate than inflation. **Director Barron** referenced a slide illustrating the transformation of Medicaid payments since 2012.

Director Barron listed the following General Fund budget recommendations: implement the Idaho Health Care Plan, which would establish a dual waiver process; create additional behavioral health community crisis centers; transfer funds from the Children's Mental Health Program to Medicaid for children with serious emotional disturbances; provide funds for Youth Empowerment Services system updates to accommodate a new assessment tool and manage workflow; invest in new technology projects to improve efficiency; and increase DHW employee compensation.

- DISCUSSION:** **Senator Foreman** commended DHW for its work, but expressed concern about current levels of social spending. He asked how Director Barron would change the health and welfare system if he could hypothetically replace the current system. **Director Barron** stated he focuses on preventive services and addressing the root cause of issues. He expressed concern about behavioral health issues in Idaho, and emphasized the importance of addressing those issues.

Senator Agenbroad noted Medicaid reimbursement rates are low in Idaho. He asked how to alleviate the burden that this places on providers and make it easier for providers to work with DHW. **Director Barron** responded DHW works to ease the burden on providers. He stated he is open to meeting with providers and stakeholders to discuss potential improvements to the system.

Senator Potts asked if the proposed budget in Director Barron's presentation included the proposed Idaho Health Care Plan. **Director Barron** responded in the affirmative. **Senator Potts** expressed concern about the proposed budget increase.

Director Barron stated DHW tries not to spend any money unnecessarily. He noted Idaho's Medicaid spending is more conservative than most states' Medicaid spending.

Senator Lee asked if the proposed 2019 budget reflects the movement of complex medical cases onto Medicaid. **Director Barron** stated the number of Medicaid recipients cited in the presentation does not include the recipients that would be added if the Idaho Health Care Plan is approved. He noted the plan would result in the addition of 2,500-3,500 new Medicaid recipients. **Senator Lee** asked if DHW has considered the private insurance cost of complex condition coverage. **Director Barron** stated \$200 million in costs would be removed from the individual insurance market. Medicaid would then pay \$100 million, which is the total cost of the plan. **Director Barron** noted he did not know the costs associated with each complex condition.

Vice Chairman Souza stated DHW originally estimated the Idaho Health Care Plan would cover 2,000 Idahoans. The estimate has since increased to 2,500-3,500. She expressed concern that there would be no stable cost estimates for the plan and that the number of participants would continue to grow. **Director Barron** explained that the estimate increased due to conflict with the United States Department of Health and Human Services (HHS). **Director Barron** noted HHS rejected DHW's original plan, which would have served 2,000 Idahoans. DHW modified the plan to obtain HHS approval; the modifications caused the number of potential participants to increase. **Director Barron** asserted the waiver aspect of the proposed plan would allow DHW to control the number of participants.

Vice Chairman Souza expressed concern that the proposed waiver could be amended in the future to include more complex diagnoses. She stated the plan would relieve the burden on insurance companies currently serving patients with complex conditions. **Vice Chairman Souza** asked if rising costs for insurance companies will create pressure to add more complex conditions to the proposed waiver. **Director Barron** stated there is no pressure on insurance companies. He asserted Idaho citizens cannot afford insurance; therefore, the goal of the plan is to reduce insurance rates so citizens can afford coverage.

Vice Chairman Souza noted \$200 million would be removed from the private insurance market if the plan is approved. The cost to the State would be \$100 million. She asked if there would be a \$100 million reduction in private insurance rates. **Director Barron** clarified that the total cost of the plan would be \$100 million; however, the cost to the State would be \$29 million. He stated insurance rates would decrease by 20 percent.

PRESENTATION: Idaho Speech, Language, Hearing Association Audiology Project. **Tammy Emerson** spoke on behalf of the Idaho Speech, Language, Hearing Association (ISHA). She stated the goal of the ISHA Audiology Project is to reinstate adult audiology Medicaid reimbursement. The 2011 Legislature made cuts to reduce the cost of Medicaid; the cuts included reducing coverage for adult audiology services. ISHA successfully recovered Medicaid coverage of diagnostic audiology services for adults, but not all audiology services. ISHA representatives discussed the issue with the Division of Medicaid within DHW. **Ms. Emerson** stated the Division of Medicaid was receptive, but wanted legislative support before attempting a rule change to reinstate adult audiology Medicaid reimbursement.

April Ward introduced herself as an audiologist and a representative of ISHA. She stated ISHA is seeking to garner legislative support for an administrative rule change within the Division of Medicaid; the rule change would allow for Medicaid coverage of hearing aid and cochlear implant services for adults. **Dr. Ward** noted

coverage of audiology services will reduce long-term costs to Medicaid.

Numerous studies have shown strong links between hearing loss and dementia. Untreated hearing loss can cause brain atrophy and can cause the visual section of the brain to take over the auditory section. This process can be reversed if individuals receive treatment soon enough; however, the process can become irreversible if not treated in a timely manner. This makes hearing aids and cochlear implants ineffective, as the auditory portion of the brain no longer performs auditory functions. Studies have also shown a fivefold increase in dementia among individuals with untreated hearing loss. **Dr. Ward** noted the cost of treating someone with dementia is significantly higher than the cost of treating hearing loss.

Dr. Ward explained individuals with hearing loss make an average of \$4,000 less per year than individuals without hearing loss. Treating hearing loss can mitigate the negative financial impact of hearing loss by 50 percent. **Dr. Ward** stated Medicaid coverage of adult audiology services would result in \$1.8 million in additional income for Idahoans with hearing loss. The cost to the State would be \$1.5 million.

DISCUSSION:

Senator Potts asked Dr. Ward to confirm that providing Medicaid coverage for adult audiology services would result in a net gain of \$271,000. **Ms. Emerson** stated the figures provided in the presentation are estimates. She noted the Division of Medicaid would conduct a financial impact study before proposing an administrative rule change. **Ms. Emerson** expressed hope that members of the Committee would contact the Division of Medicaid to request a study of the issue. She also provided several personal anecdotes illustrating the negative financial impact of untreated hearing loss.

Senator Foreman voiced his support of Medicaid coverage for adult audiology services and expressed concern regarding Idaho's current welfare system. He noted the structure of the current welfare system prevents the government from appropriating funds to those who truly need assistance. He then commended Ms. Emerson for her work.

Dr. Ward noted Medicaid spends between \$17,000 and \$20,000 for a cochlear implant and the corresponding surgery. This amount does not include follow-up services. When individuals on Medicaid reach the age of 21, they no longer have coverage of audiology services. If they cannot afford cochlear implant mapping or repairs, the cochlear implant previously covered by Medicaid loses effectiveness.

ADJOURNED:

There being no further business, **Chairman Heider** adjourned the meeting at 4:38 p.m.

Senator Heider
Chair

Rachel Goodman
Secretary