

Minutes of the Joint Legislative Oversight Committee

September 22, 2023

Room WW55, Capitol, Boise, Idaho



Senator Melissa M. Wintrow, presiding cochair

Cochair Senator Wintrow called the meeting to order at 8:30 a.m.

Committee members in attendance were Senators C. Scott Grow, James D. Ruchti, Representatives David M. Cannon (cochair), Douglas T. Pickett, Ilana Rubel, and Steve Berch. Also present were Rakesh Mohan, Director, Office of Performance Evaluations; the Office of Performance Evaluations (OPE) staff; Josh Tewalt, Director, Idaho Department of Correction; Ashley Dowell, Executive Director, Idaho Commission of Pardons and Parole; Dave Jeppesen, Director, Idaho Department of Health and Welfare; Juliet Charron, Medicaid Administrator, Idaho Department of Health and Welfare; Judy Taylor, Administrator, Idaho Commission on Aging; Mel Leviton, Director, State Independent Living Council; Christine Pisani, Director, Idaho Council on Developmental Disabilities; Noll Garcia, developmental disabilities advocate; Chad Cardwell, Deputy Division Administrator for Family and Community Services, Idaho Department of Health and Welfare

Audience members in attendance included the following:

Senator Ron Taylor, Representative Lauren Necochea, Francoise Cleveland, Jami Davis, Cecile Atimango, Martha E. Gilgen, Brittany Shipley, Jennifer Zielinski, Lindsay Dial, Bryan Robbins, Kristine Blair, Mike Blair, Jeremy Maxand, Elva Gannon, Amy Cunningham, Janet Miller, Jamie Newton, Dolores Totorica, Stephanie Perr, Stephanie Day, Marilyn Sword, Angie Tate, Christine Meeuwsen, Clarissa Thompson, Ahniah Selene, Dylan Goldade

Approval of minutes from March 23, 2023

Representative Berch moved to approve the minutes from March 23, 2023. Representative Rubel seconded the motion, and it passed by unanimous voice vote without debate.

Senator Wintrow acknowledged the American Evaluation Association Robert Ingle Service Award recently won by Director Rakesh Mohan.

Report presentation: Criminal Justice: Reentry

Director Mohan introduced the Criminal Justice: Reentry report which was released in July 2023. Project lead Lauren Bailey was unable to attend. Mackenzie Moss, senior evaluator presented the report with support from Amanda Bartlett, principal evaluator. The evaluation was requested by Representatives Cannon, Erickson, and Necochea. The evaluation was divided into two phases: (1) Reentry, and (2) Prevention. Work on the second phase is on hold until OPE has resources available.

Mackenzie reported the evaluations' findings in detail, describing the role the Department of Correction plays in preparing people for reentry, supervising clients in the community, and connecting clients to resources. The report found that limited capacity, unknown program effects, and insufficient metrics impede reentry success in Idaho. More information is needed to understand program impacts as current metrics are insufficient for informing good policy decisions.

Representative Rubel asked if recidivism was reduced when a person had more Money upon reentry. Mackenzie answered that people who had the opportunity to work in higher paid positions in the community or in reentry centers reported there was value in the extra Money during their transition. Representative Rubel asked about the relative success rates of those who had been imprisoned in-state versus out-of-state. Mackenzie answered that while this was not a metric reviewed in this report, the Department of Correction could report on this. Representative Rubel asked for in-state versus out-of-state outcomes to be quantified in the next phase to help inform policy decisions.

Representative Cannon asked why some recommendations weren't already in place, giving the example that parole commission decisions should be explained to residents. Mackenzie invited the Commission of Pardons and Parole to speak further on this. She said that sometimes reasoning was described to a resident, but this was not a part of policy.

Senator Wintrow asked for clarification regarding the percentage of people not released on time because of housing problems. Mackenzie said that some people waiting to transition to parole were delayed due to a lack of transitional housing. She added that this is a metric the department could consider tracking.

Senator Ruchti asked if recidivism rates were measured in those who transitioned to parole versus those who did not. Mackenzie said that while the report did not include recidivism rates between those two groups, the committee could ask the department for this data. Senator Ruchti asked if analysis was done on judicially imposed fees and fines and recidivism rates for parolees. Mackenzie said that was not looked into as part of the scope of the evaluation.

Representative Berch asked if simpler metrics could be used and easier to collect on an ongoing basis, such as: did the client get a degree, have a job, have a home, have a car? Mackenzie agreed. Representative Berch commented that the most effective metric was the actual feedback from the client. Mackenzie noted that program participant satisfaction surveys were on the department's list of program improvement plans. Representative Berch asked Director Mohan if there was a particular hold up in regard to scoping Phase II of this project. Director Mohan said there were several other projects that needed to be completed before the session started. Once those were complete, the scoping process would begin and be shared with the committee.

Senator Grow asked for information about the department's behavioral-intervention programs that were not rated for effectiveness by the National Institute of Justice. Mackenzie explained that the evaluation reported on the institute's ratings, but no perfect program exists. Senator Grow asked about the factor of drug abuse and if a substance abuse program was being used in

Idaho. Mackenzie said that it is one of the five programs used in Idaho, but the evaluation was not able to determine its effectiveness. The department reports on program effectiveness every two years, but the evaluation found that those reports were inconclusive. The department uses validated self-assessment tools to see how well they are implementing the programs and tend to score high on those ratings systems, but this did not necessarily translate to reduced recidivism. Senator Grow asked of the 37% recidivism rate, how many of those people have drug issues. Mackenzie directed the committee to the department for more information.

Representative Cannon asked about prioritizing the recommendations. Mackenzie answered that it depended on the policy priorities of the department and the Legislature. The broad recommendation on additional reentry metrics would be crucial to any of the other recommendations.

Senator Wintrow welcomed Director Josh Tewalt of the Idaho Department of Correction. Director Tewalt spoke about the complexity of reentry, and how success depends on each person's unique needs and how responsive the system is in addressing those needs. He explained that while three of the department's current behavioral-intervention programs had not been rated by the National Institute of Justice, a 2016 assessment found that the department's previous programs were no longer evidence based. He mentioned that the department's new programs were validated through the University of Cincinnati. He said the department is in the process of rewriting curriculum by reaching out to people who were released from custody and found success in the community.

Director Tewalt clarified how program effectiveness is measured. Idaho code is very specific about the program effectiveness elements that must be evaluated and there is only one validated tool that meets those requirements. Director Tewalt said he felt this tool does not truly measure program effectiveness. He welcomed opportunities to work with legislators to adjust the program effectiveness evaluation criteria to allow the department to be more thoughtful and accurate in how they approach measuring program effectiveness.

Senator Wintrow said that she found evaluations positive in that they point out issues so that people who are experts in the field can provide recommendations and legislators can make decisions.

Senator Grow asked how the department determines the unique needs of residents. Director Tewalt said they use a validated risk assessment, called the LSIR (Level of Service Inventory, Revised), which evaluates a number of domains in a person's life.

Senator Grow asked if and how the department is working with other agencies, such as Behavioral Health or the Office of Drug Policy, on drug abuse issues. He also asked if the director was coordinating with both the Senate and House to facilitate better policy-making decisions. Director Tewalt responded that he hopes that this can be addressed in Phase II of the evaluation. The department works to connect treatment providers with people on parole or probation who have assessed substance disorders.

Representative Berch expressed that he would also like to see the issue of substance abuse addressed in Phase II of the evaluation. He asked if there is an estimate of how much additional funding is needed. Director Tewalt said this year they plan to expand the lower-level incarceration amenities, and ask for additional staff in probation, parole, and education.

Senator Wintrow welcomed Ashley Dowell, the Executive Director of the Idaho Commission of Pardons and Parole. Director Dowell thanked the evaluation team for their work. She explained that parole denial reasons were added to the communication that goes to the case management staff as of July, and she feels that resolves the report's finding about residents having information about parole decisions. She explained that the early discharge process change referenced in the report happened during the time of Justice Reinvestment. The way it was implemented at the time instituted a different process than what is required under the constitution and other related statutes. The commission has worked with the department to try to educate people and keep expectations realistic about early parole.

Senator Wintrow said that she was glad that this was talked about, referring to the bigger questions about the motivational factors that come with early release. Director Dowell added that denial reasons are being provided to case management staff, who then share them with the residents. She doesn't think that will fix whether people agree with the commission's decision. The same applies to early discharge.

Representative Berch asked for clarification on how the change in procedure to be constitutional resulted in the outcomes we're seeing quantitatively. Director Dowell said the commission was reviewing early discharge requests in executive session, which are not open to the public. These were done in a different process than commutation.

Representative Cannon commented that even if we could have a perfect system, he wasn't sure if it would square with his ideas on scope of government. Senator Wintrow agreed that the role of government is at the heart of many political discussions. Representative Berch agreed that this is a reasonable question as long as it's asked in balance with whether society is safe, because there are costs that come with crime and benefits in making investments to reduce crime. Representative Rubel spoke about her personal experience of her home being robbed a few years ago.

Senator Wintrow asked Director Mohan to speak about the next steps for the report. Director Mohan said he will be encouraging the chairs of the germane committees to have OPE present this report to when the Legislature is in session. [REDACTED]

Committee adjourned for a short break.

Update since report: Sustainability of Idaho's Direct Care Workforce

Senator Wintrow reconvened the meeting. She referred to the motion last session for the Department of Health and Welfare return and present their tangible plans to meet recommendations.

Amanda Bartlett, principal evaluator, gave an overview of the report, detailing how Idaho has a shortage of direct care workers that is worse than the national average because pay is capped by Medicaid rates.

Senator Wintrow welcomed Director Dave Jeppesen of the Idaho Department of Health and Welfare. Director Jeppesen thanked OPE and the evaluators for their work on the report. He said the department agrees with the report's findings and appreciates the clarity and urgency on this critical issue. He discussed the historical de-institutionalization and the cadre of services that needed to be developed to let individuals remain home, which eventually became a Medicaid-funded effort. Idaho has a robust system, but the biggest challenge is staffing for direct care. Rates for home and community-based services were recently increased. He said the state will have made a \$350 million investment in this area over three years if the 2025 budget request is approved. The department has started a rate review process per OPE's recommendation and is also requesting additional staff.

Senator Wintrow welcomed Medicaid Administrator Juliet Charron from the Idaho Department of Health and Welfare. Administrator Charron thanked the committee. She began by speaking about Medicaid management capacity, referring to previous OPE recommendations and said the program is requesting 62 positions across the Division of Medicaid for specifically skilled personnel. Recommendations will also be addressed through the Medical Care Advisory Committee and provider rate reviews.

Administrator Charron discussed the methods being used to address previous recommendations for provider rate setting, including rules to ensure billing codes comply with statute, updated measures and data requirements, a new rules change proposal from the Centers for Medicare and Medicaid Services, evaluation of network adequacy across programs, and a recently developed managed care dashboard.

Administrator Charron then spoke about the direct care staff recommendations in the OPE report. She began with the recommendation to form wage targets using multiple occupations. There are three standard reimbursement rate-setting processes: cost surveys, provider rate review, and the weighted average hourly rate survey. Any changes to the cost survey or the weighted average hourly rate survey would require rule changes and additional staff and contractor resources.

Administrator Charron discussed the recommendations for improving transparency and setting rates for the self-directed model. In this case, a person on a self-direct plan acts as an employer in terms of autonomy to choose services and caregivers. Medicaid sets the fair market rate, and

there are exception processes if someone needs to go higher than this rate. The development of the rate was not clearly documented, and her team is trying to determine how to integrate different categories from the Bureau of Labor Statics, per OPE recommendation. She said they expect to be finished in the next six months, which will influence any future rate increase requests.

Administrator Charron addressed the recommendation about training accessibility and a direct care worker career ladder. Medicaid has started work to offer a voluntary training platform that would provide and record training to direct care staff at no cost to workers. She acknowledged that additional resources would be needed to evaluate and implement a career ladder.

Administrator Charron stated that the department can include more information about inflation as part of their budget requests should the Legislature request more details. The department could not evaluate region-specific rates at this time due to a lack of resources. The new Medicaid Management Information System may be able to integrate region-specific rates more easily in the future.

Administrator Charron spoke about other direct care workforce efforts in addition to OPE recommendations. The department secured funding under the federal Money Follows the Person grant to support efforts in recruitment and retention. A caregiver conference will be launched to bring more attention to this profession. A website specific to direct care workforce careers has also been launched.

Representative Rubel asked if the wage gap would be closed if the department's budget request were approved. Administrator Charron said it would be a good start, but many providers have not had a rate increase in more than 10-20 years. The department is working to get these rates caught up. The department has no control over how much businesses pay their staff. She noted that CMS has proposed a new pay threshold, requiring that 80 percent of rates go directly to direct care staff.

Senator Grow commented that the general fund revenue projections are down from last year and there looks to be a reduced revenue stream. He noted that all departments may need to recalibrate financial expectations and that there may be pushback on areas like additional staffing. He recommended reprioritization of what the department already has available.

Representative Pickett shared his experience with a family member who uses direct care services. He asked why the staffing request is not going where it is most needed. Administrator Charron said that while the department reimburses provider agencies, there is a limitation to how they can direct provider agencies to reimburse staff. She referred to the proposed rule from CMS, which would help ensure these funds are actually going to staff. She emphasized that she needs the requested staff to support this population.

Representative Pickett asked about the basic qualifications for direct care workers.

Administrator Charron said there are several training requirements outlined in rule but

sometimes those requirements are not enough. Stakeholders have indicated they would like to see more robust training.

Representative Pickett asked if some needs could be met by people who have not received training to help bridge the gap in the short term. Administrator Charron said that agencies are trying to fill those gaps, but the challenge is in building a long-term workforce that can serve the population.

Representative Berch asked if some of the emails the committee has received in regard to the report could be included in the record. Senator Grow commented that permission should be given before anything be posted publicly. Senator Wintrow agreed that this could be left to the decision of Director Mohan.

Representative Berch asked if the state had the ability to make a rate increase. Administrator Charron said that per previous rate increases, this could be in the form of a budget request from the department to the Legislature. She said that previously appropriated rate increases have been a fantastic start, but labor markets are changing. Direct care workers may be choosing to leave for better-paying jobs. Representative Berch encouraged the department to make that request.

Representative Rubel asked about the cost of the direct care worker rate increases compared to the average cost of institutionalizing individuals. Administrator Charron said she could pull that figure for the committee. She commented that it is significantly more expensive in most cases to support someone at an institutional level of care. Senator Wintrow commented that there may not be enough beds anyway, leaving people homeless.

Representative Rubel asked for clarification on how to ensure money is going to staff. She said that on legislative tours provider agencies say they do not have enough money to pay staff, but on the other hand she has also heard that the money is being pocketed by the agencies. She asked which was the truth. Administrator Charron said she cannot comment on where those funds go, as they do not direct business for those provider agencies. The department provides reimbursement at the established Medicaid rate and the agencies decide how to spend it. The department is looking to build out a provider audit function that would augment some of the rate-setting work and increase transparency and oversight of taxpayer money. She said that this work has not been started and currently relies on what the agencies provide.

Senator Wintrow commented that the department does not have the legal authority to tell a business what to do. Still, the Legislature could direct specific percentage spending, similar to other programs. This also aligns with the proposed federal rule change. Administrator Charron agreed, noting other states have passed state law similar to what CMS is proposing.

Senator Wintrow welcomed Administrator Judy Taylor from the Idaho Commission on Aging. Administrator Taylor spoke about the commission's specific role, which is to serve Idahoans ages 60 and older who have lost their ability to independently manage their own households and are not on Medicaid.

Representative Berch asked if this was a state funded program. Administrator Taylor said that the commission accepts the Older Americans Act money from the federal government, which is about \$9 million a year and there is a required state match to that. The commission is slightly overfunded by the Legislature of about \$3 million. They run the department on about \$14 million, excluding any COVID funds.

Senator Wintrow welcomed Executive Director Mel Leviton of State Independent Living Council. Director Leviton expressed thanks for the committee and OPE for the evaluation, along with the department's Medicaid division's role in serving this community. Director Leviton spoke about the role of Idaho Medicaid in meeting the needs of aged and disabled Idahoans. She said that there are between 18,000-20,000 people in Idaho who have aged, disabled, or developmental disabilities waivers. She spoke about the personal experiences of two people: Terry Shepard and Mike Smith. Director Leviton asked the committee to review the provided assessment completed by the State Independent Living Council last year.

Senator Wintrow welcomed Executive Director Christine Pisani from the Idaho Council on Developmental Disabilities. Director Pisani thanked the committee and OPE for the report. She introduced her co-presenter Noll Garcia, a lifetime advocate for those with disabilities. She said if the committee could make a recommendation to the Legislature to take to resolve this issue, it would be to fund the positions requested in the department's Medicaid division. This would provide the staffing and expertise needed to implement critical recommendations and provide the level of oversight most needed. The council spent four years working on direct care workforce recommendations, but the Division of Medicaid did not have sufficient capacity to implement them. This is why she recommends funding those positions.

Director Pisani turned her time to Noll Garcia. Mr. Garcia introduced himself as a lifelong state advocate for himself and other individuals with disabilities. He spoke about his personal experience and needs due to cerebral palsy and visual impairment. He said that because of the direct care workforce crisis he spent the last three years unsure if his personal care services would show up to help him with basic needs. He requested that the training and wages of direct care workforce and services become a high priority for the Legislature.

Follow-up report release: Southwest Idaho Treatment Center

Senator Wintrow turned the time over to Director Mohan, who introduced the follow-up to the 2019 Southwest Idaho Treatment Center (SWITC) report. Director Mohan spoke about the history of the report and introduced principal evaluator Ryan Langrill as the lead on the follow-up report.

Ryan presented the SWITC follow-up report, detailing how the Department of Health and Welfare has improved operations at SWITC. Clients have more to do, staff receive more hands-on training, and the discharge process is smoother. SWITC has made steady improvement, which was interrupted by staffing shortages in 2021 that threatened licensure. However, in 2022 and 2023 SWITC received back-to-back deficiency-free federal inspections. Understaffing, staff

behavioral health supports, and ongoing training on client treatment plans remain areas of concern.

Senator Grow said that some of the recommendations in the report should be sent to germane committees for further action and to seek sponsors in those committees. He asked about how staff are being compensated and retained at the high-demand environment of SWITC. Ryan said that SWITC has significantly increased its direct care wages for both trainees and full direct-care staff. The Legislature has passed some supplemental bills supporting staffing at SWITC, but when he conducted the follow up there were still significant staffing issues.

Senator Wintrow welcomed Director Dave Jeppesen of the Idaho Department of Health and Welfare back for questions. Director Jeppesen spoke briefly about his experience of this report, discussing the importance of JLOC and OPE in helping an agency to understand a situation and creating an urgency and focus to drive something forward. While he noted that there were more things to work on, he was proud of the department and grateful for the Legislature's response.

Senator Grow asked for an overview on the facility itself, as it is a large location with a small population. Director Jeppeson said that about 500 of the 600 acres that SWITC sits on were previously leased to the city of Nampa for golf courses. Based on legislative direction, the department sold that land. The remaining 100 acres are home to several facilities, including a juvenile corrections center, a Department of Correction re-entry center, Idaho's Job Corps site, State Hospital West, and SWITC. The older, water-damaged buildings at SWITC are being demolished and the next phase of building new facilities will start soon.

Senator Wintrow spoke about the step-down process, which is designed to help people make smoother transitions to independent life and would save the state money. Representative Berch suggested that in making recommendations to the Legislature to hire more people, that the department quantify the cost of turnover as part of their presentation to give people a better understanding of the net increases.

Senator Wintrow welcomed Chad Cardwell, the Deputy Division Administrator for Family and Community Services at the Idaho Department of Health and Welfare. Administrator Cardwell thanked OPE and commented on the quality improvements made at SWITC since the original report. He said they are in the process of addressing the remaining concerns in the report, including recruitment and retention. He said the changes are a testament to Administrator Newton and the hard work SWITC staff have done to make tangible day-to-day improvements for residents and in the workplace culture.

Senator Wintrow thanked Administrator Cardwell for his help and work. She asked that SWITC director Jamie Newton stand and expressed thanks for her work.

Director Mohan commented that based on the status of the SWITC report, the committee could decide if it wanted another follow up or to vote to close the report.

Representative Rubel moved to close the Southwest Idaho Treatment Center report. Senator Grow seconded the motion, and it passed by unanimous voice vote without debate.

Representative Berch asked if the report on reentry needed a vote to be released. Senator Wintrow confirmed that the vote had already occurred and the report has already been released.

Director Mohan spoke about the role of JLOC and OPE. He described the process of who gets to see the report before it is sent to JLOC and then released to the public. He said that it is OPE's job to build good relationships with agencies and to work together with them to improve the lives of Idahoans.

Senator Wintrow thanked Director Mohan, commenting on the process of learning to be a committee chair for JLOC. Representative Berch commented on why he values OPE, noting that OPE has a charter to get information that no one else can actually get, which the departments don't necessarily do or know how to do on their own.

Director Mohan spoke about the statute defining state agencies and the committee's broad authority to direct OPE for many kinds of evaluation projects.

Representative Cannon moved to approve adjourn the meeting. Representative Rubel seconded the motion and it passed by unanimous voice vote without debate.

Cochair Wintrow adjourned the meeting at 12.45pm.