

Minutes of the Joint Legislative Oversight Committee

March 16, 2015

Room WW53, Capitol, Boise, Idaho



Cochair Representative John Rusche called the meeting to order at 3:02 p.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:

Senator Bert Brackett

Representatives Thomas Dayley, Greg Chaney, Sue Chew, Stephen Hartgen, Lynn Luker, Mark Nye, Christy Perry, and Ilana Rubel

Dan Goicoechea, Chief Deputy Controller, Office of the State Controller

Russ Baron, Deputy Director, Family and Welfare Services, Department of Health and Welfare

Approval of meeting minutes from February 16, 2015

Representative Smith moved to approve the minutes of February 16, 2015. Senator Bayer seconded the motion, and the motion passed by voice vote.

Review and selection of evaluation topics

Cochair Rusche called on Rakesh to introduce the requests. Rakesh said JLOC had received eight requests, and the OPE could conduct three to four topics. The committee would listen to the requesters for about five minutes each. At a second meeting, the committee would discuss the topics and hear any presentation of more topics. The topic requesters should discuss how the reports will be used, whether the topic has a broad utility, and the timeliness of the topic.

Representative Smith asked how many projects JLOC would be selecting. Rakesh said JLOC could select three or four depending on the size of the projects.

Cochair Rusche called on Representative Luker to address the committee. Representative Luker said many state agencies that serve the public hold administrative hearings. In contested case hearings, the agency is a party to the proceeding. This occurs when an agency enforces its administrative rules. Hearing officers are contracted and usually attorneys. A conflict of interest occurs when an agency is a party but also pays the hearing officer—much like going into court and picking the judge who decides your case. Representative Luker said he would like the OPE to look into how often conflicts arise and what controls are in place.

Representative Luker said the appeal is another concern. Some appeals go to the agency director—the same agency who is a party, which was another clear conflict of interest. Citizens working with agencies should have fair, unbiased hearings. He said he wanted the OPE to look at alternative models among the various agencies. Do processes comply with due process and administrative law? What alternatives do other states have to maintain integrity and transparency? What would these alternatives cost?

Cochair Rusche asked whether the significance of this issue would change with the Department of Health and Welfare moving away from employing its own hearing officers and using the Office of the Attorney General instead. Representative Luker said this example was a small part



of only one agency that engaged in administrative hearings—it pointed to the importance of the request.

Cochair Rusche asked Representative Dayley to address the committee. Representative Dayley said his proposal asked for an evaluation of School-based Medicaid funding. He said in his investigation, he found more questions than his initial concern. Even though 60% of children in Idaho were Medicaid eligible, participation was low. He said the OPE could look into why children were not participating. Was it an education problem?

Federal law required, under the Individuals with Disabilities Education Act (IDEA), that schools provide certain services to student. Required services were paid by the local districts. The federal government provides opportunity to get Medicaid money for the medical portion of IDEA. Although Idaho complied with the law, it did not always seek federal funds. The cost savings to Idaho was estimated to be as low as \$8 million and as high as \$30 million in local funds. Health and Welfare audits these programs in the schools and has fined local districts for not filing federal payments—essentially taking education dollars out of local pockets and putting it into Health and Welfare. He asked if this process could be done better. An evaluation could educate local people about how to run programs. It could also report practices in other states. He said the report would be used in the Department of Health and Welfare, the Department of Education, the Legislature, and local school districts.

Representative Smith pointed to the number of school districts in the last paragraph of the written proposal and asked if that number (175) included charter schools. Representative Dayley said he received that number from the Department of Education. Representative Smith said that it was reasonable to assume the number included charter schools because Idaho has 115 school districts.

Cochair Rusche said he appreciated the comments about Medicaid funds. He noted that the proposal seemed quite broad with 12 questions and subquestions. He asked if all would be necessary in an evaluation. Representative Dayley said yes. He had been exploring and hoped JLOC could refine it as well. He found that one of the disconnects is the definitions in the IDEA law and Medicaid where sometimes the definitions were totally different. Representative Bell said she had met previously with Representative Dayley and discussed that many of the staff at the department could answer questions of what, but could not answers of why. She said this proposal could be a small to average evaluation if JLOC could look past the level of detail Representative Dayley had included in the request.

Cochair Rusche called on Representative Hartgen to address the committee. Representative Hartgen said his evaluation, if accepted, would be the first look at the financial aspects of adding specific groups in certain ways to workers compensation. His request dealt with multiple issues and multiple occupations with multiple diseases. He said in the past few years, the firefighters association had brought a bill to change the presumption of causation for certain cancers and conditions. If the cause of a workplace injury was shown to be the work environment, the injuries were covered by workers comp.

In the past several years, beginning with 9/11, firefighters have asked to have the presumption of injury changed to be caused by firefighting conditions. By doing so, proof would move to the state or payer to prove that the conditions were not the case. Some states have passed the presumption and others have modified it. He said Idaho did not have good data. The number of responders were unknown when counting volunteers, EMT, and people who clean up hazmat. Another question was the extensiveness of cancer in certain dangerous professions. Firefighting was dangerous and so was dealing with chemicals that were nonexistent 50 years ago. He said



many states have added an exclusion for practices that cause cancer, such as tobacco. He would use the evaluation to try to craft legislation next session that provided a baseline of traditional coverage. He would like to have an evaluation completed by this fall.

Representative Batt asked Rakesh about the background information included with the proposal. Rakesh said that if legislators have a proposal but are unclear whether the topic was possible as a study, the OPE will do background work. The service was available to any legislator who asks as long as the OPE had the resources. He said the OPE had never done a project like Hartgen's, so it needed to get some background. He said the background information becomes public by putting it in the committee notebook. Background information is not an evaluation or verification of information.

Cochair Rusche said he was pleased to hear about an anticipated outcome of use for the workers comp request. He asked whether Rakesh would contract out some of the actuarial material. Rakesh said 32 states have looked into the issue and the OPE would gather their information and how they implemented the law. He said he did not know whether he would need to use an actuary.

Cochair Rusche introduced his request to examine the behavioral health contract with Optum. He said he wanted to know whether the limited scope of the contract caused or aggravated problems. Should Optum be responsible for the entire scope of care? How well integrated is the outpatient behavioral health care with other aspects of behavioral care, such as inpatient, ER, or prescription drugs? He indicated data were lacking for behavioral health patients in other areas, such as court costs. He asked if Health and Welfare had systems in place to track these data. How many of the constituents' concerns were about the underlying behavioral health care system and not about Optum? The contract had raised significant dust over the past two years and an evaluation would be useful because the contract could be revisited in the next two years.

Representative Batt asked if Cochair Rusche would have a problem with JLOC asking an additional question about contract oversight. Cochair Rusche said he would not have a problem.

Representative Batt left at 3:30 to attend the House State Affairs Committee meeting.

Cochair Rusche called on Representative Rubel to address the committee. Representative Rubel asked for an analysis of the sales tax exemptions; an accounting of what exists and whether the exemptions were accomplishing their original intent and conforming with original fiscal impact. An evaluation would help the Legislature decide which tax exemptions should be continued and better inform the creation of new exemptions. Because the state was facing a funding crisis in transportation and education, the Legislature was faced with increases in sales and fuel tax. She said that according to the Idaho Fiscal Policy Institute, Idaho collects \$1 billion in sales tax but exempts \$2 billion. She asked whether inequity existed among industries—whether a small sliver of industries were paying for everyone. Could taxes be lowered for everyone by broadening the base? What were all the exemptions, when were they enacted, what was the fiscal note, and what was the actual fiscal impact? Were there groups of exemptions that might need a sunset. Were there patterns in exemptions that were much larger than projected? She said knowing whether the goals of the exemptions had been achieved and whether they made sense would help the Legislature in the future.

Contrary to what the request indicated, Representative Bell said Idaho supports Head Start at \$1.5 million every year. Representative Rubel said she had understood that Head Start was not fully funded.



Senator Bayer asked Rakesh whether there had been any past evaluations in this area. Rakesh said the OPE had not done evaluations on tax exemptions.

Cochair Rusche said the state had done an interim study on tax exemptions that resulted in eight recommendations to the Legislature. Representative Bell confirmed this had happened. Cochair Rusche pointed out that none of the recommendations were enacted—every one of them had a friend. Representative Rubel said in talking with the Speaker, the review happened several years ago and could possibly gain traction with new faces.

Cochair Rusche called on Representative Perry to address the committee about Child Protective Services. Representative Perry said she came to speak to the committee for those who could not speak for themselves—children. The abrupt removal of children from their families causes trauma—changes in hormone levels similar to combat veterans. She noted that an OPE study showed that children in Juvenile Corrections typically had some child protection issue. The evaluation indicated that \$1.4 million in federal funds were unrecovered and the current arrangement between county prosecutors and Health and Welfare did not comply with state law. Were other areas of child protection out of compliance with law? Did inefficiencies exist? She said earlier evaluations had looked at one piece of child protection. Now was the time to understand how all those pieces came together to work as a whole. She indicated that protection services cannot be looked at in a vacuum. If the state could spend a dollar for preventative child protection, it may be able to save \$3 in other operations. Child protection influences the budgets of Juvenile Corrections, Behavioral Health, Law Enforcement, and courts.

Representative Perry said that NCSL reported 30 states have recently enacted 77 laws. New, in-depth research should impact practices. She would like an evaluation to discuss options for early intervention. She said this was an important, delicate issue that could protect children from irreparable harm.

Representative Smith left at 3:50 to attend the House State Affairs Committee meeting.

Cochair Rusche called on Senator Brackett to address the committee. Senator Brackett said he was requesting an evaluation of public health district financing, in particular the formula for the general fund appropriation. Financing was last reviewed in 1993 by BSU, ISU, and U of I with a recommendation to adopt. The formula included poverty, county contribution, and public assistance. When the Medicaid contract provider shifted from EDS to Molina several years ago, available data changed. Two years ago financing was revised without external input. The public assistance, or need component, was dropped and the revised formula included population, poverty, and county contribution components.

Senator Brackett said that other factors could also be direct indicators of the workload placed on the districts, such as communicable disease, inspections, and account balances. He said he was requesting an impartial review of the current distribution formula and possible alternatives. His overall goal was to ensure adequate and equivalent resources in public health services. In light of the recent loss of federal grant funding in STD testing, he advocated looking at additional demands the Legislature has placed on the public health districts in recent years. A study would not result in legislation, but would provide an unbiased evaluation to the board of trustees and help in making informed decisions.

Cochair Rusche said there were many variables to measure quality health, such as property values. One could jigger the funding equation to get any answer. Would this evaluation describe whether the variables were actual measures of public health? Senator Brackett said that decision could be open until the OPE gets its arm around it.



Cochair Rusche asked whether committee wanted to discuss requests at this meeting or wait to hear from the subsequent requester (Representative Monks). Senator Vick said he thought the committee should wait. He asked about what input the committee would have in determining which questions were asked and whether the committee could narrow or add to the questions.

Rakesh said JLOC has latitude in deciding the scope even though the OPE had the final word. JLOC could limit or expand the scope when selecting a topic. After selection, OPE works individually with stakeholders and with the requester to understand the context of the request. After the scope is drafted, he shares it with JLOC and seriously considers members' input on the scope before making a final determination.

Senator Bayer said part of the OPE mission statement was to maintain optimal independence. JLOC rules drew a definitive line for members. In the scoping process, the committee could say yes or no to OPE's framework, but then they needed to draw a definitive line so OPE could maintain independence.

Senator Bayer indicated that some members were missing from the meeting with an understanding that topic selection would not occur today. He recommended that JLOC have two more meetings during session: one for the release of reports and another for JLOC to process information.

Senator Stennett said she too wanted to wait for topic selection. Some reports were labor intensive. She asked whether Rakesh could review the bigger and smaller studies. She could then have a better idea of what would be possible.

Rakesh said he could discuss now or at the next meeting. He said knowing whether an evaluation would be big or small was a hard determination. Last year JLOC assigned 3 projects and they turned out to be 5 projects. He suggested that members narrow the proposals by picking their four favorite through a ballot process. With the reduced number, he would discuss the potential size of the projects. Also, the concurrent resolution for LHTAC passed the Senate with fiscal impact. If JLOC approved the study, the OPE will manage the study with some impact to the office.

Rakesh said the OPE would release two reports on Monday, March 23: Schoolnet and the holiday leave policy. He said he would give JLOC the reports on Tuesday or Wednesday. Cochair Rusche asked if topic selection could be done at the same time. Rakesh said he would need to have a separate meeting for topic selection. JLOC could meet on Monday to release the reports and then meet again Tuesday or Wednesday for topic selection. Cochair Rusche said they would try to find a time that works.

The meeting adjourned at 4:13 pm



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

DISTRICT 24,
Twin Falls County

HOME ADDRESS
1681 Wildflower Lane
Twin Falls, ID
83301
(208) 733-5790

EMAIL: shartgen@house.idaho.gov



COMMITTEES

Chairman - Commerce & Human
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Environment, Energy, & Technology
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House of Representatives State of Idaho

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
District 18
Ada County

HOME ADDRESS
2107 Palouse
Boise, Idaho 83705-3540



COMMITTEES

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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

DISTRICT 11,
Canyon County

HOME ADDRESS
8791 Elkhorn Lane
Nampa, ID
83686
(208) 880-9720



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:

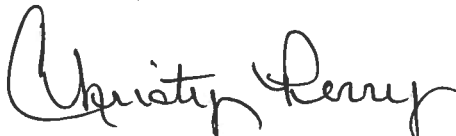
1. Explain the nexus between child protection and other areas of state government; can child protection be improved to prevent further advancement into the juvenile justice system?
2. According to the NCSL, over the last 3 years, an average of 30 states have enacted 77 laws addressing Child Protection. 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.



HOME ADDRESS
48331 THREE CREEK HIGHWAY
ROGERSON, IDAHO 83302
HOME: (208) 857-2217
OFFICE: (208) 308-4961

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.

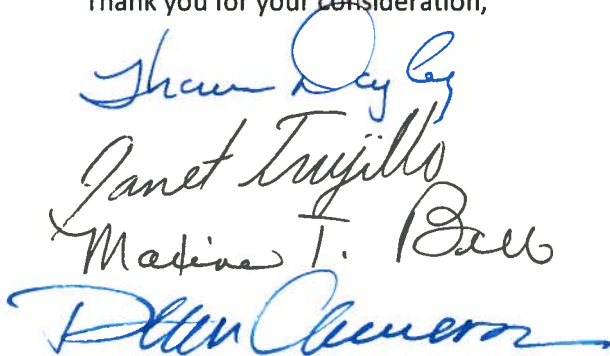
1. How well are Idaho schools accessing the available federal dollars in this program?
 - a. How many program dollars are potentially available to Idaho schools?
 - b. How much program money is being received by Idaho schools?
 - c. How much program money is not being accessed?
 - d. How can Idaho more 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,



Shawn Day
Janet Trujillo
Madeline T. Ball
Peter Cameron