

Minutes of the Joint Legislative Oversight Committee

January 29, 2018

Room EW42, Capitol, Boise, Idaho



Cochair Representative Mat Erpelding called the meeting to order at 3:00 p.m. Attending were Senators Cliff Bayer (cochair), Mark Harris, Michelle Stennett, Cherie Buckner-Webb, Representatives Maxine Bell, Caroline Nilsson Troy, and Elaine Smith. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other OPE staff. Audience members included the following:

Senator Abby Lee
Representative Kelley Packer
Russ Barron, Director, Department of Health and Welfare
Dave Taylor, Deputy Director, Health and Welfare
Tamara Prisock, Administrator, Division of Licensing and Certification, Health and Welfare
Elizabeth Kriete, Deputy Administrator, Division of Medicaid, Health and Welfare
Joyce Broadsword, North Idaho Regional Director, Health and Welfare
Robert Vande Merwe, Executive Director, Idaho Health Care Association
Kris Ellis, Eiguren Ellis Public Policy
Kathie Garrett, Idaho National Association on Mental Illness
Owen Hammond, CEO, Cascadia Healthcare
Doug Bodily, COO, Cascadia Healthcare
Steve LaForte, General Counsel, Cascadia Healthcare
Linda Hines, Owner, Grace Assisted Living
Colter Kamo, Owner, Grace Assisted Living

Report release: *Residential Care*

Senator Buckner-Webb moved to receive the report *Residential Care*. Senator Bayer seconded the motion, and it passed by voice vote.

Cochair Erpelding called on Rakesh to introduce the report. Rakesh acknowledged Ryan Langrill and Tony Grange, senior evaluators, who conducted the evaluation along with consultants Bob Thomas and Jen Schneider. He thanked the Department of Health and Welfare and the provider community for their input. He also thanked counterparts of Health and Welfare in Montana, Oregon, Utah, Washington, and Wyoming for residential care comparisons of costs and services. Ryan and Tony summarized the findings and recommendations in five areas.

1. Nursing home survey process. Ryan said nursing homes are federally certified and offer care for short-term rehabilitation and long-term nursing needs. The Division of Licensing and Certification inspects these homes for adherence to federal regulations, a process called surveys. Ryan said evaluators had heard about morale problems in the nursing home survey team and fear and mistrust among nursing home providers. In fieldwork, evaluators found these allegations to be true. Staff felt berated and belittled by the division, and some licensing staff intentionally intimidated or instilled fear in providers. This dysfunction and resulting vacancies affected **the team's** ability to complete surveys. However, even if fully staffed, the team had less staff per facility than states used for comparison (Montana, Oregon, Utah, Washington, and Wyoming). Fear and mistrust had led providers to believe citations were inflated or retaliatory. Ryan said his review found citations were supported by available evidence.

Senator Stennett asked for clarification of the differences in facilities. Ryan said the evaluation addressed three types of facilities. Federally certified nursing homes offer short-term rehabilitation and long-term care. State-licensed assisted living and residential care facilities offer care in everyday living. Adult family homes also offer care in everyday living for no more **than four individuals in people's homes**. Senator Stennett asked whether assisted living is autonomous or full care. Ryan said the level of care varied. Memory care is the highest level of care for people fully dependent on staff for daily living. People who need meals and some staff assistance is the lowest level. In Idaho, people cannot live in assisted living if they require regular skilled nursing care.

2. Assisted living survey process. Ryan said providers rated the assisted living survey team positively; however, the team was overdue on survey deadlines. The division hired temporary staff into eight-month limited positions to assist with the deadlines. Some temporaries had been previously trained, but others required a minimum of six months training to be independent. He said this temporary surveyor model was unsustainable and training resources were overextended. He said 54 percent of providers felt discouraged by the survey process to accept individuals with complex behaviors—20 percentage points higher than counterparts in comparison states. These providers expressed an unwillingness to accept individuals with complex behaviors, particularly under Medicaid. They believed the level of care they could provide based on Medicaid reimbursement would not meet the required standards held by surveyors. Additionally, providers do not have a way to dispute noncore citations, possibly leading to serious enforcement actions and exacerbating provider concerns about inconsistency and behavior management.

3. Availability of residential care. Tony said Idaho had more assisted living beds for its population than comparison states. **Idaho's assisted living facilities tend to be smaller than those** of comparison states, more likely to accept Medicaid, and be in rural counties. Tony said that smaller assisted living facilities were closing and the percentage of Medicaid residents was dropping primarily because of a 2014 rule change that required staff to be awake 24 hours in all assisted living facilities. The rule placed a disproportionate financial burden on facilities with fewer residents. Additional Medicaid regulations to take effect in 2019 have also discouraged providers from accepting new Medicaid residents. Of the smaller facilities that had been closing, most served a disproportionately high number of Medicaid and mentally ill residents.

4. **Children's residential facilities** survey process. Tony said provider perceptions of the **children's residential care team were overwhelmingly positive**. **Surveys of children's residential** facilities are conducted annually with no mechanism to extend licensure beyond a year for exemplary facilities. In addition, 22 children requiring inpatient psychiatric care through Medicaid were sent to an out-of-state facility in 2017 because the Division of Licensing and Certification does not certify **Idaho's facilities**. Six Idaho facilities have indicated interest in certifying as residential psychiatric facilities.

5. Resources and relationships. Ryan thanked the Bureau of Long-Term Care in the Division of Medicaid for its **assistance in OPE's case study**. He discussed licensing fees; Idaho was the only state of the comparison states without fees for assisted living or nursing homes and recommended that the Legislature consider implementing licensure fees as a source of revenue tied to workload. Many providers had constructive feedback for the Division of Licensing and Certification. However, stakeholders shared concerns that some feedback was unprofessional, unconstructive, and targeting specific personnel. The division is unlikely to be successful in its reform without the collaboration and support of the provider community.

Senator Stennett asked whether Idaho Medicaid dollars follow children with psychiatric needs to out-of-state facilities. Ryan said money was paid by Idaho Medicaid to the out-of-state provider.

Senator Stennett asked how the state can infuse more money into facilities. Ryan said Idaho does not have endorsements for special needs such as memory care. Idaho Medicaid reimburses memory care the same as standard care in assisted living.

Representative Troy congratulated the team on a job well done for a complex question. She asked if vacancies on nursing home survey home teams were also true for other teams. Ryan said that the **assisted living and children's** residential facilities survey teams did not have the same problem.

Representative Troy asked whether reviews had been conducted on out-of-state facilities that houses **Idaho's** children receiving inpatient psychiatric care. Ryan said the facilities were certified by the survey agency of that state.

Representative Troy commended the evaluators on their recommendation to establish a dispute process for noncore citations. She said that although the report indicated noncore citations do not have an associated punitive fine, she would argue that a loss of reputation was punitive.

Referring to page 20, Cochair Erpelding noted that other states have additional certification for memory care; however, the report stopped short of offering recommendations for Idaho. Given **how quickly Idaho's 65+ population** was predicted to grow, he asked how memory care clinics would affect reimbursement rates. Ryan said Idaho had multiple options for memory care reimbursement, including additional licensure requirements or contractual requirements through Medicaid. Ryan said OPE did not make a recommendation because multiple options were available, and the division did not necessarily need to take the lead.

Cochair Erpelding **noted that Idaho's** Medicaid reimbursement rates varied by only \$100, whereas other states' **variations** were much larger. He asked why Idaho had such a flat reimbursement rate. Ryan said that each state has a unique formula for converting assessments into reimbursement rates. Montana and Wyoming have caps on assisted living. Oregon's reimbursement rates varied more **than Idaho's because** their formula adjusted more for low-cost and high-cost residents.

Cochair Erpelding asked how many facilities were joint facilities: assisted living to memory care to nursing home. Ryan said facilities are licensed separately. He did not know.

Cochair Erpelding **invited the Governor's office to respond to the report**. No one offered to speak. Cochair Erpelding **indicated the Governor's office had** a brief response on page 82.

Cochair Erpelding invited the Department of Health and Welfare to respond to the report. Russ Barron, director, thanked the committee for endorsing and authorizing evaluation and OPE for a great job. He said the department had found the evaluation helpful and appreciated the recommendations. Some of the concerns raised in the report were already being worked on, but some have been stepped up in urgency based on the report. **He said other states' financing and** state plans will help him strategically plan for the future.

Representative Troy said some recommendations were particularly powerful. Especially the one about having a process for noncore citations and implementing extended licensing for the **children's group**. She asked whether the department would work these areas into the system. Mr. Barron said he thought so. The federal government audited states less if performance was

good over time. He said he will seriously look at those recommendations; however, he must manage a natural tension productively, and if the departments went too far one way or another, it would fail to protect the people they were meant to protect.

Representative Erpelding said that a lot of the findings and recommendations were substantial human resource problems. Often that implies that this may not be the only place where problems were occurring. He asked what the department was implementing to ensure it did not end up with this many vacancies, having to hire contractors, or falling behind on their work. He said there was a lot to this that was kind of shocking. Mr. Barron said this was not unique to the department; any organization had these problems. He encouraged a good leadership team, good communication, and an environment where individuals felt like they could speak up. He said **when you see the symptoms, you don't** necessarily know what is causing them. This report was very helpful getting to the cause.

Representative Troy asked whether the department had exit interviews and whether the annual evaluations addressed these concerns. Mr. Barron said the department has exit interviews and a good completion rate on exit interviews. Every few years it does an employee engagement survey, something Director Armstrong started. Management could ask questions down to the unit level, and they learn a lot.

Representative Smith moved to do a follow up in three months to see whether the four recommendations have been implemented. Representative Troy seconded the motion.

Rakesh said he would like a follow up in three months on personnel issues. To give the department time, he said the office could follow up on the rest of the recommendations in one year.

Cochair Erpelding clarified that the motion would be to follow up on the human resource concerns in three months and the rest of the recommendations in one-year. Representative Smith moved to accept that motion. Representative Troy seconded the motion.

Representative Bell said the state cannot assume that a state agency can do more with less all the time. You cannot watch FTEs and budgets more than you watch what is happening in the field. She said we knew from the great downturn that we had people doing more with less and in some places it does not work well. She said that if the department can get a fee increase to help with funding, make sure somebody is going to help sell it. She said to think of the budget as people doing a job no one else will do and how you can help them.

Rakesh noted that in the past committee members had introduced legislation based on OPE recommendations. As nonpartisan staff, OPE does not endorse or oppose any bills. We do provide assistance and information within the content of our report to help with any bills. He said he would offer to present the report to the germane committees.

Representative Erpelding said, as noted in the report, the department had asked for three FTEs, and that it would be worth a discussion to implement licensing fees.

The motion passed by voice vote.

Representative Erpelding thanked OPE for the presentation **and all the staff's** work.

Other committee business

Rakesh said the office was working on a report about court appointed special advocates, which would be ready on Monday, February 5. The office will then have two more reports: child protection hopefully released on February 12 or soon after and another the Commission on Pardons and Parole released the end of February.

Representative Troy moved to adjourn.

The meeting adjourned at 4:08 p.m.