

# Minutes of the Joint Legislative Oversight Committee

## February 20, 2020

### Room EW42, Capitol, Boise, Idaho



Cochair Senator Mark Harris called the meeting to order at 3:06 p.m. Attending the meeting were Senators Dan Johnson, Michelle Stennett, Cherie Buckner-Webb, Representatives Ilana Rubel (cochair), Caroline Nilsson Troy, and Paul Amador. Representative Elaine Smith was absent. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other staff from the Office of Performance Evaluations (OPE). Cochair Harris welcomed Director Keith Reynolds and the five Supreme Court Justices, indicating he was honored to have them attend. Audience members also included the following:

Senators Brackett, Nye, Lee, Nelson

Chief Justice Roger Burdick, Justices Robyn Brody, Richard Bevan, John Stegner, and Gregory Moeller, and Administrative Director Sara Thomas, Barry Wood, Deputy Administrative Director, Idaho Supreme Court

Director Keith Reynolds, Department of Administration and Administrator Steve Bailey and Valerie Bollinger, Division of Purchasing

Director Dave Jeppesen, Department of Health and Welfare, Deputy Director Matt Wimmer, Division of Medicaid, and Administrator Tamara Prisock, Division of Licensing and Certification

### Approval of minutes from February 5, 2020

**Representative Rubel moved to approve the minutes from February 5, 2020. Senator Johnson seconded the motion, and it passed by voice vote.**

### Update on management letter: Non-Emergency Medical Transportation

Amanda Bartlett, principal evaluator, said JLOC had asked the office to evaluate non-emergency medical transportation (NEMT) in March 2019. Some legislators had expressed concern about how the broker model was working. The office began the evaluation in May 2019. In June, the Governor, the Legislature, and the department asked the office to expedite the evaluation so a report would be released the first of September. The department wanted the report's information before renewing its NEMT contract.

The office worked with the department to get data but did not receive it with enough time to analyze it or develop a report. Instead, the office sent the department a management letter on August 29, 2019, that made five observations for moving forward: (1) The division had been taking a role inappropriately passive for the owner of a contracted service. (2) The NEMT program had experienced significant instability in the past several years. (3) The division had not conducted analysis necessary to accurately evaluate per member per month rates proposed by bidders. (4) The division appeared to have limited and fragmented analysis of NEMT data. (5) The division had not executed a contract management approach well enough to sufficiently ensure it protected participants.

Cochair Harris called on Matt Wimmer, Administrator, Division of Medicaid at the Department of Health and Welfare, to speak to the committee. Mr. Wimmer said OPE had said the division

could strengthen its management of the risks inherent to a capitated payment structure through three key improvements:

**(1) Analyze program cost drivers.** Mr. Wimmer said he was working with an accounting firm to examine costs. The division had completed an in-depth audit on data from the broker, and he was pleased that the data presented a coherent picture. The division will be doing a service utilization analysis by geographic region and member categories and incorporating the results into a thoughtful RFP.

**(2) Proactively plan for annual rate adequacy reviews.** Mr. Wimmer said the division had learned a hard lesson about conducting annual rate reviews. Just because the division was getting the lowest rate did not mean it was getting a good bargain if services were substandard. The division was developing an RFP with provisions for annual rate adjustments based on use, cost, and quality of services.

**(3) Develop a contract monitoring process that included independent verification.** Mr. Wimmer said the division had made some strategic leadership changes to improve accountability, ownership, oversight, and quality. He said the division had not delivered information to OPE in a timeframe needed to complete a report, which was a wake-up call. The division had refined its approach to contract monitoring and was working with managed care consultants before the contract goes out for bid. The division amended the contract in July to add more performance metrics and outline financial penalties. The division was developing an independent complaint database with a web-based submission form for customers and stakeholders to quickly submit concerns to Medicaid directly.

The contract ends in April 2021. He hoped to have the RFP released in spring 2020. The division issued an RFI in December 2019 and received about 40 responses. The division was meeting with transportation and destination providers throughout the state, such as behavioral health and disability providers.

Other recommendations were to incorporate lessons from the review of IBHP and a report from the University of Illinois. The division has worked to be clear about its goals in the RFI with a goal of zero missed trips. It was ensuring the services were appropriate to the needs of the participants and spending state dollars wisely.

Representative Troy said this topic had jammed up legislators' emails for the past year. Her goal was to not receive an email about it this year. Regarding stakeholder involvement, she asked how the division would look at rural Idaho. Mr. Wimmer said that in addition to Boise-centered efforts, the division had a transportation advisory committee where folks including dialysis, behavioral health, and transportation providers attended. For the past couple of years, the division had been working closely with people who had intellectual and developmental disabilities in an effort called Community Now. The committee traveled through different parts of the state and hears from participants who directly use the services. The division will use their input to inform its efforts. As well, the division planned to meet with transportation drivers in different areas of the state.

## **Update on report: Court-Ordered Fines and Fees**

Lance McCleve, principal evaluator, reviewed a few findings in the report: (1) The Court did not have data on civil fines and fees to track statewide what was waived and the criteria used to waive them. (2) In criminal cases, the overall dollar amount of fines and fees ordered outpaced the dollar amount of fines and fees collected. Over a few decades, uncollected fines and fees have

amounted to about \$195 million, but not all could be collected. The Court should develop a process to identify uncollectable debt. (3) District 5 and 7 collected misdemeanor fines and fees at a much more successful rate than other districts. They had clear processes for improving collection rates. Their success suggested an opportunity for other districts to improve processes and practices. (4) Even within the same judicial district, administrators and judges had different views on ensuring fines and fees were collected.

Lance said the Court had been developing Odyssey during the evaluation and could not provide him data in the way he had requested it. He was able to find work arounds but without comprehensive data had been unable to further drill into the findings. Since releasing the report, the Courts had worked hard to put together data that met most of OPE's data request. Data items not provided had depended on county processes or data practices inconsistent throughout the state. This inconsistency highlighted the bottom line of the evaluation. The Court needed a system of statewide accountability for fines and fees ordered by judges.

Lance said the Court provided summary reports with layers of detail. If OPE had access to the tables underneath the reports, it could conduct additional analysis on findings from the initial evaluation. Lessons from other states and best practices indicated that data reporting was critical to understand how the Court issued and collected fines and fees. More importantly, the Court needed a successful, cost-effective system that followed through on judges' orders and afforded constitutional protections to those paying fines and fees. The goal of the Oversight Committee for this meeting was to hear how the Court planned to put together a more comprehensive system of statewide accountability.

Cochair Harris called on Sara Thomas, Administrative Director, Idaho Supreme Court, to update the committee on the Court's progress with OPE's data request and implementation of report recommendations. Ms. Thomas recognized her five bosses in attendance and the seriousness with which the Court had taken the subject. She said Mr. Mohan asked for an update of the Court's response to the report recommendations.

Ms. Thomas said the administrative office had launched data last month at [courtdata.idaho.gov](http://courtdata.idaho.gov). The site was the first iteration of a tool that provided more transparency to Idaho's courts. Because of the Oversight Committee's interest, she prioritized data for the committee over that of the courts. The administrative office visualized and contextualized the data to inform the committee as well as the public.

Ms. Thomas said the administrative office used an inventory to learn which data were readily available, to consider whether it needed to collect additional data, and to review data reliability. Since going live, the administrative office shifted its focus to a broader view. A key objective for the following year was to use effective, quality data to inform decisions by district leadership and legislators. The administrative office was developing an audit plan to address how courts will enter data into the system, ensure data are accurate, determine how data will be audited, and plan for how clerks will be trained.

Ms. Thomas said court processes and reports were available in Odyssey for delinquent accounts in which all or a portion of the assessed was overdue. Clerks and judges had access to statutes outlining the Legislature's policies for collecting fines and fees, as well as court rules outlining procedures for judges, clerks, and parties. Through adjudication, the nuances of each case, including the role of constitutional standards, played under the facts before the judge. Judges addressed nuances while ensuring access to the courts for all and holding criminal defendants individually accountable. In addition, judges' decisions were reviewable on appeal to ensure consistency with statutes, rules, and constitutional principles.

Ms. Thomas said the Court was reviewing best practices for legal financial obligations. In 2016, the Conference of Chief Justices, the association of top judicial leaders, joined with the Conference of State Court Administrators, the state association of administrators that oversee judicial administration in state courts, to form a taskforce to address complexities of fines and fees. She referred to a handbook she provided to the committee that included four taskforce findings: “Lawful Collection of Legal Financial Obligations,” “Principles on Fines, Fees, and Bail Practices,” “The End of Debtors’ Prisons,” and “Courts Are Not Revenue Centers.” Justices would be considering the taskforce’s findings as they determine best practices for Idaho.

Representative Amador asked whether the Court planned to expand functionality for details to reports like the Controller’s Office had done with its transparency website. Ms. Thomas said she was looking at system products to expand the website’s functionality. Representative Amador suggested refining search engines because he could not find the website.

Referring to the handbook provided by the Court, Representative Troy said she hoped that debtors’ prison was something the United States had left behind in England. She said she anticipated the handbook would have been a statewide procedure manual for entering accurate data. She asked whether the Court was moving toward making data collection consistent across the state.

Ms. Thomas said she did not know whether Representative Troy was referring to data input or the collection of fines and fees. If data input, Ms. Thomas said the Court had state standards. With the move to Odyssey, court clerks were struggling to keep up with processes. The administrative office was addressing input inconsistencies with its audit processes and with training.

If referring to the collection of fines and fees, Ms. Thomas said the OPE evaluation had focused on a 2009 report from the National Center on State Courts, available on the Council of State Governments’ website. The Council for State Governments, which worked on JRI, continued to publish the report. But the National Center on State Courts depublished the report and thought it to be inappropriate. *(OPE note: The report was likely depublished because of growing opposition to the use of court fines and fees to fund court systems rather than because of the report’s practices.)*

Ms. Thomas said the handbook she provided the committee was the current best practices of the National Center on State Courts. The Idaho Supreme Court would use the center’s information to determine an appropriate process for collecting, holding people accountable, representation at hearings, and notice to defendants. The Court would be working through these nuanced, complicated pieces and addressing them.

Looking at the Court’s website, Representative Troy said she was shocked at the \$11 million of uncollected fines and fees. She asked who was responsible for collecting these fees and how would the Court resolve who should collect them. Ms. Thomas said statutes did not hold any one entity responsible. Statutes outline mechanisms for collection, but the Legislature had not placed that responsibility onto any one individual. The Court had interest in holding people accountable. But as far as an entity responsibility for collection, it did not exist in state policy.

Representative Troy said she took a field trip to Correction to look at the department’s work on its online data system. Correction will have two dedicated people entering judgments into the system so data would be entered correctly—critical for a deep dive into correctional data and similar to the Court’s efforts. The Legislature had invested a fortune in Odyssey and was getting ready to add another \$4 million to the \$7 million for the correctional system. Correction wanted

to import information from Odyssey into the correctional system. Correction hoped to go live in 2022. Representative Troy said she wanted Ms. Thomas to know this was coming up. Ms. Thomas said she had integrated with other groups. For example, the Court sends data to Idaho State Police for every felony conviction. She said she had no problem creating correctional integrations for a seamless process.

Senator Harris asked about turnout to Idaho Institute of Court Management training for clerks and whether they were coming to learn. Was it a successful program? Ms. Thomas said the administrative office had not held training since she has been court administrator. She said she had heard the program had been well attended. The Court helped counties and their clerks fund the clerks' attendance. The Court could not afford to send every clerk, but training was usually sold out.

## **Decision about further action on reports**

### ***Chained Consumer Price Index***

Rakesh said OPE presented the two reports at the last meeting that needed decisions about follow up. Cochair Harris asked for input. Representative Rubel said the report was eye opening with a wealth of data that required tremendous action from the Legislature. She encouraged the committee to weigh in on a concrete follow-up item for OPE to do. Representative Troy said that she agreed with Rubel that the chained CPI report was fantastic. However, OPE had done its job. She recommended closing the report and charge the Legislature to move report ideas forward.

Senator Johnson said he was torn. The report had good policy items. Some amounts seemed small but added up very quickly. The Legislature could put together language for indexing but may not be worth the time to calculate a 1 or 2 percent change in the tax code. When discussing \$1,000 limits for crime and how that could change from one category to the next over time was significant and had changed the original intent. The Legislature could come back each year to increase amounts instead of index, which was probably simpler. As for contracting, the Department of Administration had an opportunity to look at the reference list from OPE. At a minimum, every contract should have an escalation factor, which included if prices went down. He said he did not know what efforts he could recommend to OPE to keep the report open. He agreed with Representative Troy that information in the report was a handoff.

Senator Stennett agreed with Senator Johnson. Some formulas were so outdated, they were 90 percent undervalued. However, she received phone calls from people who liked undervalued formulas. For people providing product, they got more revenue from undervalued formulas, which was the very reason why the Legislature should scrutinize it. Even with cool reception from their peers, legislators needed to ensure they were updating statute for a clear, mainstream process. But, this was not OPE's responsibility.

Senator Johnson said they were dealing with a two-edge sword. If the Legislature were to move to chained CPI on PERSI, the phones would light up and the emails would be coming because the change would make increases in pension benefits less. On the other side, if the state was paying too much for a contract, that was not good. Going down this road will be tough to pick and choose which index to use. He said the message for him was a look at those items not indexed. Legislators needed to pick an index that accounted for some changes and preserve legislative intent for bills passed over the years.

**Representative Troy moved to close the report on chained CPI. Senator Buckner Webb seconded the motion and it passed by voice vote.**

## **Residential Care**

Representative Troy said she was excited about great progress the department had made, but she wanted to keep the report open and circle back around for a follow-up. She wanted to be sure the department was staying on the right path.

**Representative Troy moved to conduct a follow-up in one year on Residential Care. Senator Stennett seconded the motion.** Senator Johnson asked for more specifics on what the committee wanted to measure. Representative Troy said the department had not started doing a few things and a few things it had not wrapped up yet. She wanted to see how those things were doing in a year. **The motion passed by voice vote.**

## **Presentation to legislators about the topic selection process**

Rakesh reviewed the information in two handouts: “JLOC process: Selecting topics for evaluation” and “Guidelines for topic selection” (see attached handouts). He said that sometimes legislators can get disheartened when JLOC does not choose their request. But, other legislators had put their request before the committee multiple times before it was chosen.

In his review of the handouts, Rakesh emphasized that 24-hour reviews can help with legislative information needs. A 24-hour review contains background information without recommendations. The requester can come to the director anytime with the request. The director will decide whether the office can do the request. Many times, 24-reviews have been sufficient to the legislator.

A few times, the committee had received joint resolutions for an evaluation, but resolutions must still receive approval from JLOC. Other times, JFAC had approved funding for an evaluation, but the evaluation must still receive approval from JLOC.

Senator Brackett and Senator Nye did not have questions. They indicated they attended to learn.

*The meeting adjourned at 4:19 p.m.*