

Minutes of the Joint Legislative Oversight Committee

November 20, 1995

East Conference Room
Joe R. Williams Office Building
Boise, Idaho

The meeting was called to order at 8:40 a.m. by Co-chair Representative Bruce Newcomb. Members present were Co-chair Senator Bruce Sweeney, Senators Atwell Parry, Sue Reents, and Grant Ipsen, Representatives Kitty Gurnsey, Marvin Vandenberg, and John Alexander. Staff members present were Nancy Van Maren, Dan Medenblik, Margaret Campbell, and Kathleen Vanderwall, Medicaid contractor.

MINUTES

Co-chair Newcomb opened the meeting with a review of the minutes. **Representative Gurnsey moved to accept the minutes and Senator Ipsen seconded the motion. The motion passed unanimously by voice vote.**

REPORT RELEASE: *MEDICAID SERVICES FOR CHILDREN WITH DISABILITIES*

Co-chair Newcomb reviewed committee rules and procedures in hearing the release of a report. With the release, the report and all associated documents become public record. After OPE's presentation, agency representatives would be asked to make comments and receive questions from the committee.

Ms. Van Maren reviewed the findings and recommendations of the *Medicaid Services for Children With Disabilities* performance evaluation.

The Joint Legislative Oversight Committee requested an evaluation of the system of Medicaid-eligible services to children with disabilities and the process for obtaining those services after related discussions during the 1995 legislative session. The completed report included eleven recommendations to improve the provision of services and their funding. Evaluation findings resulted in recommendations that the Department of Health and Welfare reduce the regulation of Personal Care Services, in keeping with federal regulations; better inform department staff and parents of disabled children of EPSDT program requirements; and improve department oversight of the provision of durable medical equipment.

In addition, the report identified four areas in which the Department of Health and Welfare could save state money or gain additional federal funding to provide services which are already being

provided as a result of federal and state law and regulation. These included reducing supervisory visits of Personal Care Services providers; obtaining an HCBS waiver to obtain federal funds to provide respite care and in-home financial assistance, services currently provided entirely with state general funds; moving some children into community-based settings from the state hospital and other ICFs/MR; and taking steps to help Idaho school districts bill Medicaid for required services now being provided with state and local special education funds.

Co-chair Newcomb asked for a motion to receive the evaluation. Senator Reents asked if the committee should first hear comments and questions. Co-chair Newcomb clarified that the motion would signal the completion of the report, not an acceptance of the report's recommendations.

Senator Reents moved to receive the report and Representative Gurnsey seconded the motion. The motion passed unanimously by voice vote.

Co-chair Newcomb welcomed Tresa Newman, Administrator of the Division of Medicaid in the Department of Health and Welfare, to the committee meeting and invited her to address the committee with comments.

Ms. Newman said she would highlight parts of the department's written comments included at the end of the evaluation. She said the department welcomed external reviews, since they were helpful in identifying areas for improvement. This evaluation came at a time when the Medicaid program was being reviewed at a national level, which needed to be acknowledged when considering any changes to Medicaid.

Ms. Newman said Medicaid had been subject to intense public scrutiny in Idaho, and studied closely by various legislative committees and other organizations. The department had consulted with the executive and legislative branches of government to ensure that Medicaid adhered to current public policy. The department believed the message given by Idaho's elected officials had been clear: reduce the growth of the Medicaid program. While the notion of expanding Medicaid coverage to additional groups or services may have appeal to some Idahoans, it was inappropriate for the department to take action unilaterally.

In her overview of the department's response to the evaluation, Ms. Newman conveyed that the department was concerned with the overall emphasis of the report, which, to the department, appeared to be to expand Medicaid. She said the report did not acknowledge that federal and state funds originated from the same taxpayers. Other states heavily involved in leveraging federal funds would have to pay for their actions when Congress caps federal Medicaid expenditures.

Ms. Newman explained the department's response to several of the OPE's recommendations. She voiced concerns over recommendations to decrease Personal Care Services (PCS) supervision and allow PCS outside the home. She raised additional points, including: the OPE had unfairly concluded that some department staff were not knowledgeable about the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program they administered; although

Idaho had not met its EPSDT goals, many other states had not met these goals either; and the department already distributed information about EPSDT to parents.

Ms. Newman emphasized that the department had made efforts to help schools bill Medicaid for services, but said that once federal funding of Medicaid is capped, funding would come entirely from the state. She also expressed the department's concerns about recommendations to obtain Home and Community-Based Services (HCBS) waivers. In addition, she said the OPE's conclusion that respite care had been provided in institutional settings was incorrect, and went on to review the department's plan, endorsed by the Governor, to transition Idaho State School and Hospital residents into community settings. Ms. Newman said that the department agreed with almost everything the report said regarding durable medical equipment, and would be glad to implement the recommendations.

In conclusion, she said that Idaho had acted conservatively. States that used excessive amounts of federal matching funds faced near certainty that federal funds would be capped and the unpleasant job of raising taxes.

Senator Reents asked about the distribution of information regarding EPSDT. Ms. Newman responded and added that the EPSDT services have not been billed in a way that allowed the department to capture the information. The department was working on special billing codes that would satisfy physicians and give the department a count of those served. Ms. Newman said that she believed the participation rate was actually higher than reported because of this lack of information.

Senator Reents asked if the state would have received more under a block grant if they had received previous services at the 69% match from the federal government. Ms. Newman said yes.

Senator Reents asked when the department had expanded its definition of medical necessity so that specialized equipment could be used in schools. Ms. Newman said that had been occurring for a number of years, and provided an example from a year ago. She said the department had misspoken, and assured Senator Reents the department collaborated with the schools.

Senator Reents asked when during the year respite and home service care funds were exhausted. Ms. Newman said the funds run out about half or two-thirds of the way through the year. One of their bigger problems was finding trained persons to provide respite care.

Representative Gurnsey said she thought one visit a year was enough for a Qualified Mental Retardation Professional, and asked Ms. Newman what the savings would be if visits were limited to once a year. Ms. Newman said it would be a portion of \$8,000–\$12,000 included in the recommendation. Representative Gurnsey said that it may have been a mistake to put in Code reimbursement for providers. She asked if it was also in Code for ICFs/MR. Ms. Newman said the reimbursement rate was in Code and agreed that it would restrict Idaho in Medicaid reforms.

Representative Gurnsey said it was her personal observation that parents of children cared for at the Idaho State School and Hospital (ISSH) in Nampa would fight moving their child out of that facility. Parents were getting a marvelous service and they liked what they received. Senator Parry said that there were some children and adults at ISSH who required 24-hour care. He asked if the department was going to move those people into the community. Ms. Newman said it was her opinion that some form of an institution may always be needed in Idaho for those who were so severely handicapped that a private provider could not be found to care for them. Senator Ipsen asked if there would be a savings if just one person was moved out of the institution, considering fixed overhead. Ms. Newman said there would not be any significant savings until 10 or 20 were moved; then the unit could be closed and costs reduced. Senator Ipsen asked what the current population of children and adults was at the ISSH. Ms. Newman said it was 140 total, comprised primarily of adults.

Co-chair Newcomb said that he understood from the department's testimony and their written response to the evaluation that their underlying theme was their concern with the expansion of Medicaid. Yet, as he read through the OPE report, he read about services that are presently being provided that should be provided with fewer state funds. He wondered if Ms. Newman could tell him if that was a correct reading of the evaluation. She responded that she believed it was correct.

Senator Parry asked if they were moving adults out of ISSH into a community setting. Ms. Newman said they were doing this under the current HCBS waiver. She restated that some were not appropriate for community placements. Many had come to the ISSH from community settings where they were no longer welcome.

Senator Sweeney asked Ms. Newman to define "capping." Ms. Newman said she believed the cap was going to be the amount of funding given to states in 1994 or 1995, with a percentage for growth, but that the exact amount was unclear. Senator Sweeney asked if Idaho would not receive some federal funds in the future because they had not applied for them previously? Ms. Newman said that was correct. However, she said, the state had a conservative Medicaid program. The formulas presented in Congress were going to respect conservative programs, and offer higher growth percentages. "Maybe we were too conservative and thank goodness, I think, that we were," she said.

Senator Sweeney asked if it was the policy of the Department of Health and Welfare to fund required services exclusively with state dollars even when federal dollars were available. Ms. Newman said it was not. For example, the department had supported the schools (which were funded by state dollars at 70 percent) by setting up the program and training participating school districts in the billing process. There had been collaboration in program development and it was DHW's intent to allow Medicaid funds to be matched.

Senator Sweeney said that the theme of DHW's critique of the report was concern over recommended expansion. He asked where in the report it recommended expansion beyond that which is already required. Ms. Newman said that matching state dollars to federal dollars was an expansion. Offering more services would create a demand which would require more funds to be

spent. Senator Sweeney said her response illustrated DHW's underlying philosophy, but that it was the Legislature's decision whether to spend more state dollars.

Senator Ipsen asked if it was too late to go back and readjust the level the federal government would cap, so that Idaho could obtain those lost funds. Ms. Newman said that it was probably too late.

Representative Gurnsey said it was wrong to think every program was a federal mandate. The state made program decisions too, such as PCS. She thought the department was asking for a 21% increase in Medicaid funding for the coming year. If the federal government provided block grants, allowing a 5% increase, the state budget would be in a "world of hurt." "We're going to have to look at our own state mandates."

Representative Alexander asked if there would be additional requests for in-home PCS services if they were provided outside the home. Ms. Newman said the request would come in additional hours. If PCS services outside the home were part of Idaho's policy, and if those hours were seen as medically necessary, it would be difficult to deny those services.

Co-chair Newcomb asked where the report recommended spending additional state funds. Ms. Newman said that if the demand for services was allowed to grow, and when federal money was capped, there would be only one alternative for funding: appropriate more state general funds.

Representative Vandenberg asked about agency and individual providers of PCS. He asked Ms. Newman about a shortage of supervisory nurses which he had heard was threatening the existence of individual care providers. Ms. Newman said she would research this.

Senator Sweeney repeatedly questioned Ms. Newman about the existence of a policy in law, regulation, or legislative intent, that would direct the department to fund only with state dollars, and not apply for federal matching dollars in areas where the state had that ability. Ms. Newman said she was not aware of any laws like this, but that the department had tried to be conservative in the Medicaid program. At this point, the agency did not believe that any expansion of federal funding would be the prudent way to go because it will be capped.

Representative Alexander said in trying to leverage school dollars, there had been opportunity for funding if the schools had participated. He suggested finding a mechanism to incentivize the schools into participating. Ms. Newman agreed that would be one way to do it. She said it would be a wonderful opportunity, but believed it was too late to change the base.

Representative Gurnsey asked Ms. Newman what programs or other steps could be taken to help parents who keep their children at home. Ms. Newman suggested investing in day-care providers.

Co-chair Newcomb said that no where in the report could he find where it says to expend more state dollars to expand available services. Rather, the report identified federal dollars that have

not been tapped, when the state's investment had already been made. Ms. Newman said he was correct, unless the Medicaid cap makes it impossible to fulfill current obligations.

The committee took a 15 minute break.

Co-chair Newcomb asked if there was anyone in attendance who wished to respond for the Governor or on behalf of the Department of Education. Receiving no response, he asked the committee if there were any questions for the Office of Performance Evaluations' staff.

Representative Gurnsey asked the staff to share some of the things they had learned. Ms. Vanderwall said that Idaho's experience differed from Minnesota's. She recently had heard Minnesota's Department of Human Services' plan for dealing with the expected federal caps. The department had been more liberal in spending on Medicaid services than Idaho, but had produced a plan to continue to serve those currently being served, with no further expansions or increases in taxes. Ms. Vanderwall said that Idaho could keep this in mind as they decided how to respond to potential caps on growth. "It's not automatically the case that general fund expenditures will have to increase. That's within the discretion of the state."

Mr. Medenblik briefed the committee on proposed changes under the Congressional House version of the bill. As of the week before, the funding would be based on FY94 spending. Whatever Idaho received in federal funding in FY94 would be the starting point with a 14.7% increase in FY96. There would be a 9% increase in FY97, and a 7% increase every year thereafter until the year 2002. Compounded, Idaho's overall spending would increase about 75% between 1994 and 2002. The bill would cap the rate of growth, but Idaho would have one of the higher growth rates across the nation. Mr. Medenblik said the report identified two areas that specifically could receive federal funding for services the state already provided with state funds: respite care and in-home financial assistance and school district services. Between those two recommendations, the report estimated the state could be receiving \$1.17 million per year more in federal funds.

He displayed a graph that showed how this amount, if included in the base, would have increased over time as compared to two estimates of growth in Medicaid spending costs. Given the growth rate mentioned, Idaho's funding would actually outpace medical inflation. The projected growth rate of Medicaid, without any changes for the program, however, could grow faster than what Idaho would receive. The caveat was that if a block grant was adopted, states would not be required to continue increasing services at the same rate as funding increases.

He said the Senate bill was more generous to Idaho. In order to reach a compromise, the two houses may allow states to choose between the two versions.

Senator Sweeney asked the staff if there was any place in regulation, legislative intent, or law that prohibited the department from requesting matching federal dollars for any of the programs that were involved in this report. Ms. Vanderwall said that there did not seem to be any prohibition from the department doing that. She said she thought it was the department's understanding of what was expected of them.

Co-chair Newcomb asked if the staff found anything in the report that required an additional expenditure of state funds. Ms. Vanderwall said no.

Senator Reents said that an expansion of services provided outside the home would probably lead to an increased demand for services, because this kind of services may be what the family needs over someone coming to the home to provide the service. She asked what the alternatives would be for limiting the total amount of dollars that would be spent on PCS. Ms. Vanderwall said it was within the department's control to maintain spending for those services at the level that it exists right now. The department already limits the number of hours a child can receive PCS services and the report does not recommend changing that. It recommended those hours be able to be spent other than inside the child's home.

EVALUATION FOLLOW-UP PROCEDURES

Co-chair Newcomb asked Tom Gostas to provide an update on the state travel management study. He said the committee would return to the Medicaid recommendations after this.

Mr. Gostas stated that the report recommendations were intended to strengthen state travel policies, encourage staff efforts, and lead to effective oversight. He said that all eight recommendations were being addressed. Four primary steps had been taken. First, the Board of Examiners subcommittee held a meeting which addressed five of the recommendations, including changes in lodging reimbursement rates, meal reimbursement rates, policies to encourage advanced booking of airline tickets, and two recommendations regarding a mandatory statewide credit card. The subcommittee had distributed draft rules to all agencies. Second, the Department of Administration was researching credit card programs. Third, the Personnel Commission was reviewing the travel compensation time policies for all state agencies for compliance with federal law. And fourth, legislation was being drafted to codify the state's exemption from sales tax.

Mr. Gostas said that as a result of field work, OPE staff had taken several additional steps to encourage better management of employee travel. OPE identified, pursued, and resolved five issues related to travel activities of state employees. Staff wrote letters or memoranda to notify appropriate agency and elected officials of certain other issues, and presented the report findings to the Board of Examiners subcommittee meeting in October and will attend their meeting tomorrow. Also, OPE staff had learned from agency directors that the report had been useful in reviewing travel policies.

Representative Gurnsey asked about the status of the recommendation to adopt federal lodging limits. Mr. Gostas stated that the subcommittee discussed recommendations on changes to lodging reimbursement, but had not made a decision. They were soliciting comments on the recommendation to adopt the federal guidelines with the circulation of the proposed new policies, and planned to continue discussion at tomorrow's meeting.

Report Release Recommendations

Co-chair Newcomb said the committee would discuss whether to accept the Medicaid recommendations. He said the committee could discuss them collectively or individually, or assign them to a subcommittee to make recommendations of the general committee. The subcommittee would consist of four members, equally divided between parties and the Senate and House.

Senator Sweeney asked Senator Ipsen what the Senate Health and Welfare Committee may want to do with the report or portions of the report. Senator Ipsen said the committee would be very busy this year implementing the Governor's Welfare Reform Advisory committee recommendations. He said he had not voted for this study, but would do what he could.

Representative Gurnsey said the committee needed to follow through with the recommendations. She recommended assigning a subcommittee to follow up and work with the department on implementation.

Representative Gurnsey moved that a subcommittee be appointed to work in conjunction with the department to follow up and report back at the next JLOC meeting. Senator Sweeney seconded the motion.

Senator Ipsen clarified that the Senate Health and Welfare Committee would be happy to follow up on this if they had time, given that welfare reform was a more pressing matter.

Senator Parry asked when the next meeting might occur. Ms. Van Maren said she anticipated the next meeting would be for the release of the pupil transportation study, the last week of January or first week of February. Senator Parry said he was concerned the matter may not be settled by February, which would make it difficult to make decisions on the recommendations at the next meeting.

Co-chair Newcomb asked if Mr. Medenblik's analysis of the House bill and Senate bill showed that the state would be limited to only those programs it was currently participating in. Mr. Medenblik said about half of the recommendations in the report would be affected by changes in federal funding. It was probably too late to get additional federal funds in the state's base.

Representative Alexander asked, if the President vetoed the legislation, if Idaho would be able to take advantage of the recommendations and get the additional funds in the base now, so that the state would benefit when a block grant eventually came through. Mr. Medenblik said he thought that while it was true current law would remain in effect under a veto, the federal government may not allow states to expand their base like this.

Senator Sweeney said he thought the committee could separate out the recommendations that would be affected by federal changes. He said if there were no changes at the federal level, it was incumbent upon the department to review each recommendation and say if they could

implement it, and if not, why. He cautioned against waiting for federal decisions in order to take action on these recommendations.

Co-chair Newcomb appointed a subcommittee: Senator Reents and Senator Ipsen (co-chairs), Representative Gurnsey and Representative Vandenberg. **Hearing no objections, the appointments were passed by unanimous consent.**

OPE's Role in Implementation

Ms. Van Maren asked the committee how many of OPE's resources should be devoted to the implementation of evaluation recommendations. She presented several options for follow up.

Representative Alexander asked Ms. Van Maren if she thought it would be appropriate for OPE staff to work with the committee in drafting legislation which resulted from recommendations. Ms. Van Maren said she thought it appropriate for OPE to advise on technical details, at the committee's decision to put something into legislation.

Senator Reents asked about actions the committee could take in response to the release of a report. It appeared that the committee could adopt all the recommendations, or, in this case, appoint a subcommittee. Co-chair Newcomb said the subcommittee needed to determine which recommendations would not be appropriate to implement at this time. Then the full committee could go through each remaining recommendation and determine if the whole committee would accept that recommendation. Representative Alexander said he thought the recommendations were valid; their implementation was what needed to be discussed.

Senator Reents said her question was about approval of the recommendations versus their implementation. Was the subcommittee to monitor implementation or recommend which to approve? Ms. Van Maren said because these were OPE reports to the committee and agencies, the committee needed to vote to "receive" the report. That officially signaled that the work had been completed and the committee accepted the report on its merit. After that point, the committee could take several actions, such as reviewing each recommendation for approval, or referring the report to the appropriate legislative committee. The decision about which steps to take was up to the will of the co-chairs and the committee.

Representative Gurnsey said this was all about oversight, which she thought could be done in different ways. She added that at each meeting, she thought the OPE staff should provide a review of implementation of report recommendations. Senator Sweeney said he was reluctant to completely adopt the recommendations because he could not get good answers from the department. But he also did not want to not adopt the recommendations. Ms. Van Maren said that OPE reports provide sound, independent analysis of a program or issue, but the recommendations did not preclude the department coming up with even better ways to address problems once they had been identified.

Senator Ipsen said the Welfare Reform Committee started with where they wanted to go in Idaho. With federal changes, the committee would implement their recommendations in certain

ways; without federal changes, they would implement the recommendations in other ways. There will be a joint meeting of the Health and Welfare Committees on December 12. There will be a report on the welfare reform advisory group and an update from Department of Health and Welfare. OPE will be asked to share their findings. All this will help provide a sense of direction.

Co-chair Newcomb said the circumstances surrounding this report may be unique. Representative Alexander said he agreed. The committee needed to plan for changes and not wait to see if the federal government will do something.

Co-chair Newcomb encouraged the chairs of the subcommittee to delineate what could be implemented and what may have to wait. Senator Sweeney reminded the committee they could meet earlier than late January if needed.

PROPOSAL TO IMPROVE THE EVALUATION PROCESS

Ms. Van Maren reviewed the levels of evaluations. She said that scope statements were an introduction of the issue and a list of research questions; they could be written quickly. Background papers take longer but provide more information. Originally, the committee decided to request several background papers which would make several work products available, and, in some cases, provide sufficient information about a topic so that a full report would not be necessary.

Oral reporting, management letters, and brief reviews were also options available in the evaluation process. Each had a certain role, and their use depended on the evaluation and what the committee wanted when a topic was selected. Oral reporting allowed the OPE to relay to agencies concerns which were not necessary to include in the written report. Management letters were primarily tools used by financial auditors to expand on non-financial findings, but could be appropriate in some cases. Brief reviews were tightly scoped evaluations that were shorter and took less time to complete. In addition, the committee could request a performance report, agency progress report, or update.

Senator Sweeney said it boiled down to the credibility of the report. In some cases, the committee may not need to go into a full evaluation because the problem gets solved as a result of the committee asking questions. The mere fact that the committee looks at an issue causes agencies to analyze themselves. He thought that was part of the case with the Division of Aeronautics, which would be discussed later.

Ms. Van Maren said that it sounded like the committee would like scope statements for some topics; background papers would still be used and could help resolve some issues without a full report, and the committee would consider whether brief reviews were appropriate in some cases.

Co-chair Newcomb adjourned the meeting for lunch.

TOPIC SELECTION

Update on Department of Revenue and Taxation, County Support Division

Ms. Van Maren said that pursuant to the committee's request, she requested an update from Commissioner Barker and a representative of the County Treasurer association. Selections from the Tax Commission's response and a letter from the treasurers were provided in the committee notebooks. She also included an unsolicited letter from a county assessor. To summarize, in the last year a number changes had occurred. There was evidence of reorganization to address the needs that surfaced a year ago, and both parties recognized ongoing problems. It appeared that the process was going more smoothly this year than last.

Co-chair Newcomb commended the State Tax Commission representatives present (Commissioner G. Anne Barker and Henry Nagel, Administrator of the County Support Division) for their efforts.

REPORT ON 10/20 LEGISLATIVE COUNCIL MEETING

Ms. Van Maren reviewed the three budget request items which were approved by the Legislative Council on October 20: OPE's budget increase for fiscal year 1997; continued lump sum appropriation; and creation of a separate budget program for the OPE, distinct from LSO.

Senator Sweeney said the request was received with much support from the Council. Senator Parry clarified that the inflation and CEC figures would be set by the Legislature.

TOPIC SELECTION (CONTINUED)

Division of Aeronautics

Ms. Van Maren said that, in addition to the materials she distributed last week about the Division of Aeronautics, she had included in the notebooks a letter from the Idaho Transportation Department outlining a report they will provide to the Transportation Resources committee in January.

At JLOC's request, she met with the Governor's Chief of Staff and reviewed the Governor's concerns about the Division of Aeronautics. The Governor's fundamental concerns were with safety and accessibility to a plane on short notice.

In returning to this topic later, Representative Gurnsey asked the Transportation Department staff present (Deputy Director Keith Bumsted and Acting Division of Aeronautics Administrator Larry Faulkner) whether they had hired a half-time person, as approved by JFAC, to schedule aircraft use. Mr. Bumsted said that he was unclear whether a special person had been hired for scheduling, although the function was being supported. There was also an attempt, perhaps not adequate, to advise other agencies when aircraft had been scheduled to go to certain destinations.

Other Requested Topics

Ms. Van Maren said there were several requests for evaluation. With the committee's permission, she would like Dan Medenblik to work on the pupil transportation study during December. As a result, staff would be available to begin new work in January. The committee could select a topic today for an evaluation to begin in January, select several topics for background papers to receive at the next JLOC meeting the end of January or first of February, or decide on a topic at the next meeting. Overall, it was important that an evaluation begin during the session.

Co-chair Newcomb said he would like a background paper on the promulgation of rules and the Administrative Procedures Act: the cost and process. Representative Vandenberg said he would like to look at the disposition of the 1287 funds within the Department of Lands, which were the 10% timber receipts, 10% cottage site receipts, and 100% grazing lease receipts. He wanted to know what those monies were being expended for, and if they were in keeping with the legislation as it was initially passed.

Representative Gurnsey said she would like to know what was in Idaho Code with regards to the reimbursement rate to the medical profession. Senator Sweeney said there was controversy in Lewiston about the building of additional nursing home space when there were existing beds not being used. There was a perception that the additional space had to be built regardless of whether it was needed, and the state is obligated to pay \$50 a day for it. Representative Newcomb said there were some professional services which could not bill Medicaid directly, so the hospitals bill their services, tack on 40 percent, and then bill Medicaid.

Ms. Van Maren reviewed some of the other requests, including: the costs, organization, and independence of administrative hearing officers, the Board of Education's regulation of proprietary schools, the Division of Purchasing, and the Board of Optometry's ability to make decisions without medical oversight.

She also discussed the OPE's opportunity to participate in a national joint evaluation of correctional industries programs. Participating states each do their own evaluation, and include one or more jointly-established, national objectives. States then issue their own reports. The results are combined into a national report. There would be an opportunity to learn from other professionals nationally and possibly collaborate with the Legislative Auditor, who will conduct a financial audit of correctional industries soon. Representative Gurnsey asked how much time it would take, working with the Legislative Auditor, to do the national joint evaluation. She asked if there would be funding available. Ms. Van Maren said it depended on the number of objectives the committee wanted to address.

Ms. Van Maren also reported back to the committee with more information, including an Attorney General opinion, on state agency affiliations with non-profit organizations.

Senator Ipsen said long-term care in Medicaid was the biggest budget item, and should be looked at very strongly. A second topic that would not result in a savings of money, but was very much

needed was in Child Protection Services. People feel that their rights were being violated. An evaluation could look at the procedures to protect rights.

Senator Parry asked how many background papers OPE staff could handle at one time. How many of these topics should be selected? Ms. Van Maren said, given staff resources described earlier, two or three background papers could be completed by the end of January, or two background papers and a number of scope statements.

Senator Sweeney said his first choice would be long-term care and reimbursement to medical providers. Co-chair Newcomb said there were two black holes in this state: correctional costs and medical reimbursement, whether it was Medicaid for long-term care or hospitals. He asked the committee if they would like to pick those as topics.

Senator Sweeney moved to request a background paper on reimbursement for medical providers and long-term care and Representative Gurnsey seconded the motion. The motion was passed unanimously by voice vote.

Senator Parry said he thought the committee should seriously consider the child protection topic raised by Senator Ipsen. It was a problem the Legislature would have to face eventually. Ms. Van Maren said she understood it did not have to do with the cost of child protection, but more with who was providing the services and whether the services were meeting legislative intent. Senator Ipsen said people's rights were being violated.

Senator Parry moved to request a background paper on the Child Protective Services and Senator Ipsen seconded it.

Senator Reents questioned whether the Office of Performance Evaluations was the appropriate place to address these types of concerns. She said it may be more of an issue that a task force like the Attorney General's task force on domestic violence could handle. Senator Ipsen said he thought a background paper could help determine a direction and a goal. He further outlined the concerns about the issue and the steps which had already been taken to try to resolve them.

Representative Gurnsey said she was hesitant to ask OPE to get involved in "emotional issues." She said the office's job was to find inefficiencies and cost-savings. There was not any black and white with this issue; the office could spend all year and still not solve the problem. Senator Ipsen said that one advantage to a background paper was that the office could take some of the emotionalism out of it and get some reason into it. Senator Parry said some direction could come out of a background paper that would show where to go with this.

The motion passed by a five-to-two voice vote.

Co-chair Newcomb suggested that the background paper identify alternatives to address this issue if OPE was not the appropriate agency.

The committee discussed the APA request again. Co-chair Newcomb said it may be premature to address the APA, since everything could change in six months. He thought it should be revisited at a later date.

CONSIDERATION OF DRAFT LEGISLATION

Senator Sweeney said the draft legislation had been divided into two separate bills, the first being largely housekeeping. It incorporated many of the changes asked for last year. He asked Ms. Van Maren to explain.

Regarding the second bill, Ms. Van Maren said she had worked with a deputy Attorney General on two issues. The first clarifies that OPE could release records once the performance evaluation was no longer being pursued. She said one of the most important things they were trying to do last year was to establish that this office was interested in getting as much information into the public hands as possible. However, currently there was no provision to release records unless a full evaluation was conducted and released. In this bill, as soon as the evaluation is no longer being pursued, associated records become public record.

The second issue provided that, under very strict circumstances, the identity of an individual providing information could be protected. The circumstances required that the data be necessary for the evaluation, not be able to be obtained any other way, and a formal record of the action be noted in the file.

Senator Sweeney moved that the bills be drafted and referred to the appropriate committee for introduction during the next legislative session, and Senator Ipsen seconded it. The motion passed unanimously by voice vote.

Senator Reents asked for clarification on the subcommittee's charge. She asked for a timeline in light of Senator Ipsen's involvement in welfare reform.

Co-chair Newcomb said they were to decide what recommendations would be timely to pursue. The subcommittee could consider what OPE staff had already put together about which recommendations could be implemented regardless of federal changes. Senator Sweeney said he thought the department should give their response to each of the recommendations and cite authority where appropriate. At that point, decisions could be made regarding implementation of the recommendations.

Co-chair Newcomb said the underlying emphasis of testimony from the department was that this evaluation wanted an expansion of Medicaid services that would increase spending. However, what the evaluation said was that ongoing and additional demands could be met with federal dollars—not an increase in state expenditures. He said some programs were using only state funds, when federal funds were available. The department could not justify that.

The meeting adjourned at 2:30 p.m.

Note: A verbatim transcript of meeting proceedings is available for review in the OPE.