Senate Health & Welfare Committee

Minutes
2005

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	January 11, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	None
CONVENED:	Senator Compton called the meeting to order at 3:00 p.m.

Senator Compton welcomed everyone to the first meeting of the Senate Health and Welfare Committee for the year of 2005. He asked that everyone be prompt, courteous, and concise. Our job is to provide quality health care for those who cannot provide for themselves. He instructed the committee that they have a tremendous task before them. Medicaid costs need to be controlled. The excess is causing a drain on other services. We are not JFAC as we serve a different purpose. We work jointly but with our own agenda. We need to look for the big issues and not worry about the small stuff.

Senator Compton introduced, **Karl Kurtz, Director of the Department of Health and Welfare**, he stated he was appointed by the Governor in 1999.

Karl Kurtz presented the Overview of the Department of Health and Welfare. He stated that over the next three (3) days they would educate the committee on what Health and Welfare is about and what they do. He also said they would be happy to discuss any issues the committee felt were important. He stated that Health and Welfare is an umbrella agency, encompassing not only health, but also all other human services in the state of Idaho, with the exception of the Commission on Aging. They have five (5) appropriations; Medicaid, Family Community Services, Welfare, Health, and Indirect Support (See Attachment #1, Chart #1). He stated their Mission and Vision really guided them in their decision making and approach to discussions and issues. The mission of Health and Welfare is to provide the health and safety of Idahoans. The vision is how they are to accomplish this goal and want to develop and implement sustainable integrated health and human service system.

The strategic plan is updated every year and they review and plan for the next five (5) years. In the Strategic plan there are five (5) goals in the plan. The Department meets quarterly to update and review our goals. This plan will be ready by July. In the next twelve (12) months they will

have the “Any Door Policy” ready to go throughout the state. The Department hopes to have a new long range strategic plan by July of this year. This should make the services the same caliber throughout the state. He stated they had been working on an initiative for the past few years called the “Any Door Initiative” due out in the next twelve (12) months. The Goal will be that people can come in any door and get the service they need and not have to worry about which door is the right one.

He referred to the Budget Pie Chart which shows what the department budgets are. They have an overall budget of 1.6 billion for the year 2006 and that the largest proportion of the funds come from the federal government (See Attachment #2, Chart #2). Mr. Kurtz discussed how the Department works as to the budget. The circles are in proportion to what the budgets are in the five (5) different categories; Medicaid, FACS, Welfare, Public Health, and Indirect Services.

Mr. Kurtz stated that the Department is working to maximize the monies from the federal government. The federal government has placed an auditor here to work with the Department on a daily basis.

Senator Darrington asked if the auditor has a responsibility to report on what he finds.

Karl Kurtz stated that it was still in the definition phase and that he would be happy to share the reports if and when they get them.

Senator Compton inquired further as to the auditor as to what they will do or if this phase it is still too new to comment.

Karl Kurtz stated that it was so new that he did not know how it was going to work.

Karl Kurtz stated that Medicaid was the largest in terms of appropriation of our budget. He stated that there were very few people who work in the Medicaid program. Medicaid is the fastest growing portion of the budget as well as the state’s budget. It is not just an Idaho problem. Tennessee spends 33% of their budget on a Medicaid type program.

Senator McGee asked if there was a state that was a success story and one that the state of Idaho can emulate.

Karl Kurtz stated there was not. He also stated that Provider payments were the biggest share of the budget.

Senator Werk reminded us that we should be looking at the big picture not just one facet of whether there is success.

Karl Kurtz thanked the committee.

Dick Schultz, Administrator, Division of Health presented the overview for the Department of Health. . He stated that he started with the Department in 1978. He stated that he wanted to give an overview from the perspective of the Division of Health. He referred to the Appropriations chart (See Attachment #1, Chart #1). The chart is divided

into three (3) categories; Expenditure, Appropriation and SAY 2005 Spending by Program. He went through the chart with the committee.

Senator Compton stated that **Mr. Schultz** had referred to three (3) funds and had referred to the third one, which provided help to the rural districts that can't provide the equipment they need. He asked as to what the other two were.

Dick Schultz stated that other two funds were used across the bureau to finance the communication center and all the operations within the bureau.

Senator Compton asked if there was a communication center.

Dick Schultz stated that there was and that it provided service for ambulance dispatch for rural areas that don't have a 911 services. Also provides the hub for response for hazardous material spills and for mass accidents that would require multiple individuals talking at the same time in a response to an emergency.

Senator Compton inquired as to who would call this service.

Dick Schultz stated it would be state police, ambulance, ITD road crews, flight calls. A variety of emergency responders use this service.

Dick Schultz continued his overview and reported on the state lab. He stated that the State lab was the only one in the state that does epidemiology/virology testing.

Senator Broadsword inquired as to how much income that provided the state. She stated that since you are the only lab, in the state, that provides this testing, then you are obviously getting paid for this service. Does this off set the cost or do you actually make something off of it?

Dick Schultz stated that they did not charge for this testing, that it is beneficial to them because it helps the department with epidemiological follow-up. That they encourage that kind of reference sample being sent to us.

Dick Schultz moved on to the Rural Health and Primary Care Office. This office is a huge benefit to the department. It is the only group that we have that is focused on improving access and quality of care in rural areas. They receive over $690,000 in both federal grants as well as $230,000 in general funds annually that's used to provide grants to health care facilities and communities to improve access to primary care in rural areas. There are also funds in there to improve the quality of care. They are the ones that evaluate and recommend the designation for critical access hospitals in the state. Of our forty-four hospitals in the state, twenty-six (26) hospitals are designated as critical access. The limits on that are they cannot have more than twenty-five (25) beds within the facility, but if you have the (CAH) or Critical Access Hospital designation, then your reimbursements from medicaid payments are higher. Also physicians who are located in health professional shortage areas get an additional 10% from Medicare. There is huge benefit for rural providers as a result of the work this office does.

EMS or Emergency Medical Services, **Mr. Schultz** stated that their primary functions are to license, to follow the ambulances both ground and air in the state of Idaho. In addition, to certify all levels of EMS providers in the state. They provide grants to EMS units for equipment and training. There's the State Communication Center that provides the link for hospitals and incoming ambulances as well as for any emergency responder. He stated that 60% of the EMS people, especially in the rural areas in the state, are volunteers.

Health Policy and Vital Statistics bureau is next on the agenda. The health certificates and surveillance unit is the one group we really rely on to turn all the data that we have from our vital records; death data, morbidity data from our reportable diseases, surveillance data on newborns, crack survey, behavior risk factor, all this information is analyzed in this one unit.

Senator Compton inquired as in the case of hospitals. They are reimbursed based on cost in medicare. The data is out there because the hospitals use it.
Dick Schultz stated that he would have to refer that question to **Karl Kurtz**.
Mr. Kurtz stated that the hospitals every year are required to give a cost report. This is primarily for their out patient part of their business. All the inpatients, except for critical access hospitals, are paid on a perspective basis. They have a very complicated reimbursement system that is categorized with every admission by diagnosis and then you have to multiply that with a dollar factor. The out patient side, a lot of the out patients are based on cost.

Dick Schultz continued with the next item which was health preparedness. This was established three (3) years ago as a result of the antiterrorism program. The monies come from the federal government and a large portion was used at the lab to upgrade a negative pressure room for samples that may be hazardous. It's still in the construction stage.

Dick Schultz reported that the Vital Records management is our database system. We were the first state to have fully automated birth certificate system. From the hospital to the vital stat's unit here is fully automated. There is no paperwork.

Dick Schultz reported on the Contract Services. He started with the office of Epidemiology. They are the ones that get all the attention in the paper. They are the ones that got the front page on the Syphilis outbreak in Canyon County area. We have sixty-four (64) cases of syphilis this year. This is unheard of since the 1970's when he started, he stated they would have outbreaks, but we haven't had it since. Now we have a situation where syphilis has gotten into a community that is abusing drugs and sharing needles.

Dick Schultz continued with Clinical Preventive Services. This service provides immunizations, women's health checkups, WIC, reproductive health, worker health and safety, STD/AIDS awareness and prevention, children's special health, newborns and aids screening.

Senator Compton stated that if we get the people to sign up for preventative health measures that would help with long term care issue, like exercise and diabetes education. He wanted to know Mr. Schultz's thoughts on the subject.

Dick Schultz thanked the Senator for bringing this up. He stated that the community of environmental health has been working on just those issues, exercise, smoking, etc. Children's immunization has increased by 83%. He also stated that they are trying to keep older people healthy and in their homes and that this was a big step toward lowering costs for elder care.

Senator Kelly stated that the governor last night spoke of cleanup standards for meth labs were being developed. Could he update the committee?

Dick Schultz stated that he could. He stated that clean up standards have not been developed. He said that they are going to have to pick a non health risk based standard or process. It is starting to be debated and that negotiations are going on as to the type of standard for a base line.

Senator Kelly asked if there was a time line.
Dick Schultz stated that the governors' office was taking the lead right now.
Senator Compton thanked **Karl Kurtz** and **Dick Schultz** for the overview presentations. He also introduced the committee secretary, Joy Dombrowski and the new page, Jessica Pfeiffer. He stated that in Reviewing the Rules it was tradition for the Vice Chairman of the committee to chair the Rules Review process.

Adjourned Being there was no further business. The meeting was adjourned at 4:38 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	**January 12, 2005**
TIME:	**3:00 p.m.**
PLACE:	**Room 437**
MEMBERS PRESENT:	**Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly**
MEMBERS ABSENT/ EXCUSED:	**None**
CONVENED:	**Senator Compton** called the meeting to order at 3:00 p.m.

Senator Compton welcomed everyone to the meeting. He then introduced **Greg Kunz, acting Administrator for the Division of Welfare. Mr. Kunz presented the overview of the Division of Welfare. His testimony follows:**

"I appreciate the opportunity to spend just a few minutes with you to provide an overview of the work done by the Division of Welfare. If you came to the Department of Health and Welfare, looking for assistance, your first contact with us would probably be with staff in the Division of Welfare."

"The reason: It is the Division of Welfare that determines eligibility for Medicaid, Cash Assistance, Food Stamps or help with Child Care expenses. Many Idahoans come to the Department for help. Last year over 181,000 applications were received and reviewed. That was an 18% over the two year period since 2002. Most of the application increases were due to applications for Food Stamps. (50,000 more applications processed than the amount processed in 2000) ."

"Not all applications are approved. A primary responsibility of Division Staff is accurate eligibility determination. Only about 53% of all applications received by the Division are approved."

"Almost a third of the budget appropriated to the Division of Welfare, about 29%, is used to determine eligibility. It is determined either at the time of application or on open cases. In the past year, in addition to the eligibility work associated with applications, the Division of Welfare was responsible to evaluate ongoing eligibility for 277,000 Idahoans in Medicaid, Cash Assistance, Food Stamps and Child Care."

"The staff, who determine if you are eligible for assistance, are called Self- Reliance Specialists. Their goal is to help people become more self reliant. Our Self-Reliance staff look at the needs of individuals and families, designing and integrating healthcare, child support services, temporary cash support and employment training to help people become more self reliant."

"The Division of Welfare is sometimes called the Self Reliance Program.

That's because the programs in the Division of Welfare are organized to help families in need, with a focus on work. We are considered a work first state, that is our philosophy."
"Today, when someone applies for cash assistance we focus on providing temporary "W" support. We help them find employment and other sources of income rather than becoming dependent on state assistance. The name of the program reflects this philosophy, it is called "Temporary Assistance for Families in Idaho", or TAFI. When we conduct an interview to determine if someone is eligible for TAFI, we negotiate a contract. We say: "These are the services we can offer you. In return these are the work-related activities you must complete."
"If a person qualifies for food stamps or cash assistance, they are required to take part in work activities, preparing to go to work or looking for work. We also provide work readiness and job placement services, by contracted staff, whenever we can assist an eligible family to move to work and greater self reliance."
"When we say that TAFI is a temporary program, it really is. Idaho has established in rule that no adult can receive more than 24 months of TAFI assistance in their lifetime. This creates a real sense of urgency and keeps this program as it was intended, a source of short-termtemporary help."
"One thing to note as we talk about services in Division of Welfare, some are funded entirely by the federal government with no state general funds involved."
"Food Stamps for instance, helped about 90,000 Idahoans each month in 2004. This is up12,000 from 2003. It provided for almost $90 million dollars for food expenses for Idahoans last year ."
"This federal money goes directly to Idahoans with open Food Stamp cases. So, it is not included in the Welfare appropriation."
"Eligibility is a major part of the work done by the Division of Welfare, but we do other things as well. For example, we are responsible to the federal government to oversee the use of a number of federal grants used by local communities. The Community Services Block Grant (sometimes called CSBG) is just one of several grants that help to improve living conditions for low-income households and encourage self-reliance. Other services provided through local community non-profit organizations, but with Division of Welfare oversight include Home Energy assistance, weatherization, emergency food assistance, and telephone assistance.
Another area of spending is in our Child Care Program. This program subsidizes child care expenses for low-income families so parents can work. This program is designed to work closely with the TAFI program. Many families on TAFI or Food Stamps are working at low paying jobs. The Child Care program can assist that family while they are working. The Child Care program represents almost another third of the spending in the Division."
"In state fiscal year 2004, we helped parents of nearly 9,500 children, a slight decline from the previous year, with their child care expenses.
Almost 13% of the Division of Welfare's spending goes to the actual benefits paid as cash assistance. There are two cash assistance programs: The TAFI program, which we have already talked about, and the Aid to the Aged, Blind and Disabled or AABD program. In our AABD Program, we provide cash assistance for low-income, people who are

blind, disabled or age 65 or older."
"Our Child Support Program is the final piece of the Division of Welfare's activities. It plays a critical role in helping families achieve greater self reliance. Child Support is automatically involved when families apply for assistance. Idaho wanted to make sure that any child support court order was actively enforced, to collect any legally owed child support and to minimize the need for families to get assistance from the state. In fact, if child support can be obtained, many families do not need other state assistance. Child Support uses a variety of tools to locate an absent parent, establish paternity and use the appropriate enforcement methods to increase the child support payments."
"In state fiscal year 2004, state staff maintained almost 92,000 child support cases. These cases accounted for more that $150 million dollars in paid child support. Some portion of this amount would have been paid without the involvement of the Child Support Program, but we estimate that actions by Child Support, impacted child support payments in two thirds of all child support cases."
"Another $40 million in child support payments were receipted and distributed using contract staff. Overall over $190 million in child support payments are supported by the Child Support Program."
"As was the case with Food Stamps, child support collections are not reflected in the Division of Welfare's appropriation. The money passes directly to families."
"That completes the overview of the various programs in the Division and how they are related to our funding. Of the estimated $125 million dollars in expenditures for 2005, 60% goes directly to recipients in the form of a benefit."
"The Division of Welfare ' s appropriation is the third largest in Department of Health and Welfare, after FACS and Medicaid. It is the second largest Division as measured by the number of Full Time Positions. Today the Division has 550 positions. Most of those positions are distributed in local field offices."
"The work done in the Division is fairly labor intensive. Interviewing applicants, verifying information, and processing hundreds of thousands of contacts with applicants and recipients requires well trained and efficient staff."
"Since June of 2001 the Division's staff has been reduced by 159 positions. At the same time, the number of participants in our various programs has increased by 19%. This gap between staffing resources and our workload has created a crisis in the Division and has resulted in a decline in the quality of our work."
"Compliance issues have been identified in the Food Stamp, Child Support, and Medicaid Programs. The Division hopes to gain legislative approval for additional staff positions in the current legislative session. 43 positions and the funds to support those positions have been requested as a supplemental request in 2005. These positions will help us improved the quality of our Food Stamp case work and decrease the possibility of federal fiscal sanction. If approved, this would bring our 2005 position count to 593. 25 positions and the funds to support those positions have been requested in the 2006 budget. These positions will help us to improve the quality of the work, then number of cases we can work, and the amount of money we can collect. ..in the Child Support Program."

"In addition, $3.1 Million is being requested to help manage costs in the Child Support Program to improve the accuracy of Child Support accounting of child support debts. This is a compliance issue identified in recent Legislative audits. If the Division receives the positions and funding it requests from the legislature we will make improvements in our quality and decrease some of our compliance issues Over the past two years we have focused on finding efficiencies and reducing the effort required to do our work. At the same time, remaining focused on our core responsibilities to do good eligibility , collect child support and provided needed services to families in need.".
"Over the last two years we have employed a number of strategies to meet the growing demands of our workload. We have stopped doing some things, community resource, redundancies changed processes and policies if we can do them more efficiently, moved staff and resources where they are most needed, developed new management tools to help make workload decisions, where appropriate we have contracted work TAFI work. We will continue to do these things regardless of the budget decisions made this legislative session. You can help us in one of these areas. You will see a new Food Stamp rule this session that is intended to simplify the Food Stamp Program so we can operate more efficiently. The rule is based on new options provided by congress in the Food Stamp Program. It is a critical part of the Division's effort to help Idaho families, and it is also a critical part of making eligibility work less resource intensive."
"There's a dark cloud on the horizon. The thousands of applications for Medicare Part D prescription drug benefits we will have to process. I hope this quick overview has been helpful. Thank you for the opportunity to share this information, if you have any questions, I would be happy to answer them."

Senator Darrington stated that dealing with the 1989 budget act called for a three (3) year review of orders and was told that we were behind at the time I asked in 2002. He asked if we were further behind now.

Greg Kunz stated that he would provide the additional information at a later date.

Senator McGee asked as to how many were pushed off the program due to sunset of TAFI limits.

Greg Kunz answered that it was close to 200.

Senator Compton inquired as to the accountability and tracking in the food stamp program.

Greg Kunz stated that that it was down 9% error rate which was down from the 15% error rate. He recognized we would be challenged due to lack of funding so didn't rehire when people left.

Senator Compton inquired as to the self declaration of income and if it allowed to faith in the honor system.

Greg Kunz stated that it worked very well. In the case of Food Stamps, it was not the individuals making errors it was staff struggling with what to

do when they sift the information received.

Senator Compton thanked **Greg Kunz** for the presentation.

David Rogers, Administrator for the Division of Medicaid, presented the overview for the Department of Medicaid.

Senator Compton asked David to give a little of his background.

David Rogers stated he had been in Idaho for 1½ years from Florida. That he had been in the Medicaid program for seven years.

David Rogers testimony is as follows:

Senate Health & Welfare Medicaid Overview. Federal law (Title XIX) was established in 1966. Medicaid is a Federal/State Partnership. States operate programs under Federal guidelines. Federal government provide matching funds (FFP) 70% for most services; 50% for most administrative activities. Services in federal law are described as some mandatory that you have to cover under your program and some that are optional that the state can elect to provide.
Senator Compton inquired as to what program do we offer that other states are not.
David Rogers stated that the department had a very limited number of types of people like the CHIP-B, breast and cervical cancer testing and elderly care. One of the optional services is the prescription drug. You will hear more about federal waivers. This is where the state can request the federal government to waive certain programs.
Idaho Medicaid is a billion dollar program. Total 2005 Appropriation is $1,051,401,100. Due to Federal Financial Participation which is $288,171,600 in the General Fund dollars was in the 2005 appropriation. Most funding $1,015,534,000 goes to provider payments.
Medicaid provides comprehensive benefits package:

.Hospital care
.Physician services
.Prescribed drugs
.Lab & x-ray
.Therapies
.Medical equipment

Also provider services that reflect the population:

.Nursing home care for elderly and disabled
.Care facilities for the mentally retarded
.Home and community-based care. This program is design to keep more elder at home and out of nursing homes.
.Mental health services. Mental Health is the fastest growing service area for Medicaid.

Currently Medicaid covers over 170,000 Idahoans. Caseload has growth over last several years. Increase in over 75,000 lives covered since 2000.
Senator Coiner inquired if due to dealing with Mental Health problems up front, if there was any statistics showing a decline in health services for those people, at a later date, because instead of self medicating themselves with drugs and alcohol, they are dealing with their mental health issues.
David Rogers stated that he didn't have the figures, but they have looked

the link and will get the figures back to the committee.
Much due to CHIP, implemented in late 1990's. The majority of those services by Medicaid are children.
Medicaid also serves elderly and disabled. Costs going up given aging population & prevalence of chronic illness. Where caseload has been dominant factor driving spending. Medical inflation now accounts for larger part of the increases
The Governor's Budget request includes a supplement appropriation of $15 million GF for 05 due to increased utilization
.Mental health
.Developmental disabilities
.Prescription drugs
Total appropriation request for 2005- T&B only- is $1,08,253,900.
Request total Medicaid appropriation of $1,156,031,200. Most of the $1,119,988,400 is for provider payments (T&B). Includes $11,076,400 GF for increased T&B due to caseload and inflation.
Several Decision Units, requests staffing.
Program development continued cost-containment effort two in Supplemental for 2005:
.Development of Buy-In for disabled workers - 3 FTP - all federal funds
.Implementation of Adult Access Card -3 FTP -26,100
Dedicated account -revenues from Insurance Premium Tax
2006 requests includes $1,250,000 in T&B for 1,000 adults; begins July 2005
Also in 2006 request:
.Expand Estate Recovery -3 FTP -Net saving ($34,200) GF
.Mental Health Provider Credentialing, 1 FTP + $350K for contract
.Community-Based L TC -7 FTP -$99,700 GF
.RALF Regulatory 4 FTP -$138,800 GF
.Develop County Options -1 FTP -$56,000 GF
Senator Keough asked what the process was to get the program approved.
David Rogers stated that they need to serve Medicaid individuals with a broader program to keep them on Medicaid while returning to the work force.
Cost Containment Approach: Do no harm. We Can increase quality and slow growth in costs at same time. Have generated $150 million in cost avoidance since 2003. We continued to reduce costs through current efforts. Will report on several efforts that have been our focus during 2004 and 2005.
.Enhanced Prior Authorization for Pharmacy
.Care Management for Adults with DO
.Disease Management
David Rogers thanked the Committee for support for rule last session. He stated he would be presenting more on what the Department accomplished to JFAC Thursday morning.
More importantly, the Department was looking forward to working with the Committee as the Department face the challenges ahead.

Adjourned Being there was no further business **Senator Compton** adjourned the meeting at 4:32 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	**January 13, 2005**
TIME:	**3:00 p.m.**
PLACE:	**Room 437**
MEMBERS PRESENT:	**Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly**
MEMBERS ABSENT/ EXCUSED:	**None**
CONVENED:	**Senator Compton called the meeting to order at 3:04 p.m.**

Ken Deibert, Administrator of the Division of Family and Community Services. More commonly known as "FACS", presented the Overview.

Mr. Deibert's testimony is as follows:

"Thank you for giving me the time on your very busy schedule today to give you a brief overview of the responsibilities of the Division of Family and Community Services. The Division, either through the direct provision of services or management of contracts, provides many of the Department's social and behavioral health functions. The Division is designated as the lead agency for operations of systems of care for adults and children's mental health, adults and children's developmental disability services, infant and toddler programs, substance abuse, and children welfare programs which include child protection, adoption, and foster care. In addition, the Division is responsible for the operation of Idaho CareLine2-1-1."

"The states three institutions are also in important component of the service delivery system overseen by the Division. Idaho State School and Hospital (ISSH) located in Nampa, Idaho. State Hospital North of Orofino, and State Hospital South in Blackfoot."
"I will be providing you a brief overview of each of these services today to help you gain a general understanding of the scope of responsibility this Division has for meeting the social and behavioral health needs of the citizens of Idaho. The Division has about 1,574 employees, who work every day under some times very difficult circumstances to provide for the needs of some of the most vulnerable of Idaho's citizens, children devastated by abuse or neglect, individuals and families dealing with mental illness or substance abuse, or those challenged by disabilities."
Ken Deibert told a story about a mother who called and asked for someone to go and check on children living in a home. When entering the home they found seven children and one child was under the house

duck taped to a support. Large quantity of drugs was found in the home, animal feces and poor living conditions including no food. The agency is still looking for someone to take care of the children as both parents are in jail. The seven children are from five different fathers and five different sets of grandparents.

"With the difficult economic times that the State has faced over the last several years, the Division has seen a net reduction in FTEs to provide our mandated services of almost 120 positions. Our FY05 appropriation of $62.5M in general funds is almost $5.5M less than in FY02. The loss of general funds and the subsequent loss of federal matching revenues has meant an almost $7M reduction in total funds available to this Division to provide services to an ever increasing number of individuals who are seeking care through our programs."

"This first program that I will briefly discuss in Idaho CareLine2-1-1. This is an information and referral resource available through the Department to all of the citizens of the State of Idaho. It is a bilingual service that links citizens with health and human services. Idaho CareLine serves as a central directory for Department programs and has a database containing approximately 3,000 community health and human service contacts. In FY04, more than 83,000 callers contacted this service seeking information on providers who might be able to address their needs."

"The Children and Family Services Program is the next area I would like to discuss. This area of the Division is responsible for child protection, foster care, adoption, compliance with the Indian Child Welfare Act, and children's mental health services, day care and residential facility licensing. We have experienced significant growth in child protection activities in the past several years. These increases appear to be driven by economic conditions in our state as well as a significant increase in the number of families affected by substance abuse, particularly methamphetamine. This past year we investigated more than 7,000 complaints of abuse, neglect or mistreatment of children. We saw a 25% increase in the number of substantiated allegations of abuse and neglect this past FY. More than 2,900 children were served in the foster care program in FY04, this is a 22% increase from previous years and 33% more than in FY01. Our cost associated with providing foster care to children placed in the state's custody rose over $2M this past FY. As a direct result of these increased costs, we have been placed in a position where we have had to hold positions in our child welfare program vacant in order to generate sufficient funds to cover the trustee and benefit costs associated with foster care. We are currently operating with more than 6% of our authorized child welfare positions vacant."

Senator Werk stated that the Department has had a quite dramatic increase in the number of children being put in the foster care system. He asked where the children were going and if we were developing more foster care homes, group home or other facilities.

Ken Deibert said the Department had about 1300 foster families available to the state that would take the children. He stated the Department worked extensively with the relatives of the children to try and place them with people like their grandparent, aunts and uncles. He stated they try not to use group homes.

Senator Werk continued that as the Department sees the amount of children increasing, are these children kind of getting residential treatment and are they being mixed with juvenile correction children. Was that occurring in the system.
Ken Deibert stated they had in both the foster care and mental health program about 141 children who was in residential treatment the past year.
Senator Werk wanted to know if the Department felt the 141 children were in the appropriate place to be side by side with children that they can potentially learn their misdeeds from.
Ken Deibert stated that the question was excellent and the Department struggles with this since there were more children coming in the program that are from the juvenile correction system. They do look at the types of children who are cared for in the individual facilities. The Department was responsible for licensing the facilities. He stated that the Department had not seen any indication of significance with mixing the two populations is causing ongoing problems.
Senator Compton asked if these children were going into institutions or not and if they were just going into facilities like Youth Ranch.
Ken Deibert stated that children coming into child protection program were not put into detention.
Senator Werk inquired if the Department had a position open for a director for child protection.
KenDeibert stated that as of Thursday the position will be filled and that the position had been open for six months.
Ken Deibert continued, "Another component of the child welfare program is our adoption service. Currently, we have 284 children in the state's custody who are awaiting adoptive families. We successfully placed 161 special needs children this past year in adoptive homes, which are up from 118 the previous year. The majority of the children who are placed in the state's custody and waiting adoption are children who have significant physical, medical, and emotional problems."

"A component of the Adoption and Safe Families Act that was passed in 1997 provides mechanisms for states to establish programs to provide financial support to families to cover the extra costs of care for these special needs children. The cost of the state's adoption assistance program has increased 14% from FY03 to FY04, that is almost $500,000 in increased costs. Our assistance payments to families average $300 per month. We are requesting a supplemental appropriation in FY05 in the amount of $3,513,900 to add fifteen additional case workers to manage the increased number of investigations we are experiencing and to cover the T&B cost increases in foster care and adoption assistance. Our FY06 budget request, includes $4.M to cover the costs of expansion of our child welfare training academy to assure new staff are adequately trained to carry out the significant responsibilities of their position, Trustee and Benefits funds to meet the projected increases in growth in adoption assistance, foster and residential treatment and provide a 4% increase in rates paid to foster parents."
Senator Broadsword inquired if the Adoption Assistance Payments were funded by the federal government.
Ken Deibert stated the Adoption Assistance Payments were not totally

funded by the federal government. There were two forms of Adoption Assistance and that was the 4E and those were eligible for social security and others who don't qualify for federal dollars are funded by general fund.
Senator Werk stated that **Mr. Deibert** had indicated the Department had left 6% of the positions vacant to use the money to provide benefits.
Ken Deibert stated that was correct.
Senator Compton inquired as to the payment the Department provided the foster parent.
Ken Deibert stated the payment for foster care depended on the child and that the rough average was about $250-$260 a month.
Senator Compton asked if the Department was asking for a raise on the monthly payment to foster care parents.
Ken Deibert stated the Department was requesting for FY06 a 4% increase in our foster care rate.
Senator Broadsword inquired as to the total amount being paid out in foster care.
Ken Deibert stated it was $11.4 million a year. He also stated the Department was asking in appropriation next week for supplemental appropriation $313,000 to fund additional caseload and costs.

Ken Deibert continued, "Many of you in the Committee are quite familiar with the Jeff D. Lawsuit. For those of you who have not had the opportunity to hear about this situation, it is important to note that the State is under federal court order to improve its children's mental health services. We entered into an agreement with the federal court several years ago to accomplish a number of significant improvements for this program. We are continuing to work toward a resolution of this lawsuit. If you would like additional information on this lawsuit and the state's efforts to resolve it, I would be happy to provide those to you at another time."

"The Children's MH Program is focused on developing a system of care for children and their families who are experiencing serious emotional disturbances. Our services are voluntary. Programs emphasize a community-based approach. We currently serve only children who are diagnosed with a serious emotional disorder and lack the financial resources to receive care from other providers. The CMH program served approximately 3,900 individuals this past year, which is approximately an 8% increase from the previous years. We have submitted a decision unit to reinstate 13.5 FTP and associated trustee and benefit dollars removed from our budget in previous years hold back to serve approximately 900 additional children. This request is consistent with expectations of the court agreement. Total cost of the decision unit requested for this program in FY06 is $2M."

"The AMH Program in the State of Idaho was established in 1968 through legislative action. There is a two-fold focus for our adult MH programs, first to provide intensive treatment services to those in acute psychiatric crises and secondly to provide long-term intensive services to those who have serious and persistent mental illness. Over 18,000 individuals were provided some level of service through our AMH Program this past year." "That's a 30% increase from the previous year. Only those individuals who lack financial means and meet the diagnostic eligibility criteria of

having a serious and persistent mental illness receive long term services through the states seven regional MH programs. An integral component of our AMH Program is our Assertive Community Treatment (ACT) teams. This treatment model provides intensive community-based case management, medication management, medication management, vocational support, and intensive therapy. Currently, we have limited ACT team services operating only in the metropolitan areas of the state. We have approximately 39 staff assigned to provide this intensive level of services."

Senator Coiner inquired if the ACT Team Staff were contracted employees or if they were employees of Health and Welfare.

Ken Deibert stated that the ACT Team Staff were employees of the Department.

Ken Deibert continued, "The Department, in an effort to increase the availability of this very effective and well researched treatment model, is requesting in FY06 budget the addition of 16 FTP that will allow for the formation of two rural ACT teams to serve rural and frontier areas of the state. Our budget request is $876,000 for salaries and trustee and benefit costs."

"I understand there is a bill that will be introduced to address some of the issues around availability of materials used in the manufacture of methamphetamine. Methamphetamine abuse is a significant problem in this state. Just to give you a perspective of the growing problem the state is experiencing with methamphetamine abuse, in 1997, 16% of the adults seeking treatment in our programs identified methamphetamine as their drug of choice. In 2004, 34% of the individuals entering treatment listed meth as their drug of choice. In our child protection system, our workers indicate that between 40-80% of the cases that they become involved in and require removal of children is directly related to methamphetamine or other substance abuse. Our mental health system is seeing dramatic increases in the number of people presenting for treatment who are addicted to meth and have a serious metal health problem. This past year in recognition of the significant challenges that this state faces in providing for adequate access to treatment of individuals who are addicted to alcohol or other drugs, the Governor's office submitted an application for a grant known as the **Access to Recovery**. In June 2004, we were notified that the state was one of fifteen successful grant applicants nationwide. In our FY05 supplemental, we have requested an increase in our spending authority of $7.5M to allow for the expenditure of the funds received in this grant to improve access treatment and recovery services. This is a three-year grant that is designed to increase client choice of treatment providers, expend access to a comprehensive array of clinical treatment and recovery support options including faith-based programs. This grant has specific requirements for monitoring of provider performance and client accountability including systematic drug testing, improvements in employment and education, reduction of contacts with criminal justice system, as well as several other areas."

Senator Werk stated that we have community-based treatment right now, before we run out of money. He asked if Mr. Deibert could comment on that and if the provider's were concerned that they could go out of business before the Department can get back into business, which would leave the participants without providers for the services. The providers

could say that the Department has $7.5 million dollars and yet the money is not going anyway. He wanted to know where we were on that.
Ken Deibert stated the Department had not run out of money yet. The Department is still purchasing through network providers treatment services. He stated the Department had a hold on some services in certain regions, because the regions had over spent way over their projected budget. The Departments plan at the present time, if they do get the approval, is spending in the 05 budget for the ATR grant and begin using the ATR grant money in May of this year to purchase services and the Department would have spent down all the treatment dollars that the Department has in the 05 budget by the end of April. He stated if the Department doesn't get the supplemental appropriation for the ATR grant, the Department would have to revisit that and would have to reposition where they have spread out the money throughout the fiscal year. Mr. Deibert stated that it would mean the Department would have to put some limitation's place on how many more people can access treatment.
Senator Werk clarified that the Department did not anticipate right now any interruptions in services that were being provided.
Ken Deibert stated that was correct.

Ken Deibert continued, "The Division's Developmental Disability program manages and delivers services for people with developmental disabilities ranging in age from newborns to senior citizens. Through partnerships with community providers, the program makes a wide array of service options available to consumers and their families allowing them to move towards greater independence and a more complete participation in their communities."

"One of the areas in our DD services that we continue to see growth and demand for our services is our Infant and Toddler Program. This program coordinates early intervention services for families and children with special needs from birth to three years of age. This program partners with community agencies, and families to plan comprehensive and effective services for families and children with special needs from birth to three years of age. This program partners with community agencies, and families to plan comprehensive and effective services to enhance each child's developmental potential. In FY04, 2744 children were served, an increase from 2,481 the previous year. As a direct result of the new federal requirements established under the Child Abuse Protection and Treatment Act, we expect to serve in addition to our normal increases approximately 420 additional children. We have a decision unit for FY06 for this program for $82,000 to allow for the continuation of the early hearing detection and intervention program. This was a very successful service that was implemented under a federal grant which provided training and equipment to hospitals and medical personnel throughout the state to engage in early hearing evaluations of newborns. Idaho was able to accomplish a 96% testing rate for newborns because of this intervention. Without the federal funding to maintain this program, our efforts to identify newborns who have hearing losses and provide early interventions for them would be markedly reduced. 21,000 newborns were screened this past year, 45 newborns were identified with hearing loss and were referred for corrective service. This funding will allow for the continuation of this program."

"Idaho State School and Hospital (ISSH) located in Nampa, Idaho provides specialized services to the most severely impaired people with developmental disabilities in the State. ISSH is an intermediate care facility for the mentally retarded (ICFMR). ISSH provides a safety net for clients who can not be adequately cared for in their communities. We have developed services at the community level to decrease the need for institutional based care for our DD populations. With improvements in community based services and development of more intensive treatment and training opportunities at the facility, we have seen a decrease in the total number of individuals in residence."

"Let me turn briefly to the states two psychiatric hospitals. SHS provides psychiatric in-patient treatment and skilled nursing care to Idaho's adults and adolescents with the most serious and persistent mental illness. She is accredited by the Joint Commission on Accreditation of Health Care organizations and has 90 adult psychiatric beds, 30 skilled nursing beds, and 16 beds for adolescents. The number of admissions to this facility dropped slightly in the past FY primarily because of increases in the length of a stay for people being treated. The intensity of problems new admissions present adds to the length of time it takes to prepare a person for return to the community."
"SHS is a 50 bed psychiatric hospital that provides treatment to acute court committed patients. The number of admissions to this facility as well as the average daily census declined slightly in FY04 compared to FY03. This was due primarily to the same reasons experienced at SHS. Additionally, this facility has been unable to recruit additional psychiatrists which would allow them to increase admissions. We are continually managing waiting lists for people who are committed to the care of the state who can not be admitted to one of our hospitals because of a lack of capacity. Our cost for serving committed clients in community hospitals continues to increase each year as a direct result of this limitation."

"Our staff and programs are critical components of the stat's social service system. We work with many state and county governmental agencies in the provision of these services. We incorporate input from local councils, advisory boards, interagency and governmental committees, and client advocacy groups to assist us in designing our service delivery system, to strengthen our ability to respond to individual and community needs, and to assure the most appropriate use of state funding. We are continually challenged to meet all of the needs of the residents of this state. Building partnerships and designing more effective ways to collaborate, both within the Department and with the communities we serve is a key to success."

"Again, I appreciate the opportunity to give you a very brief overview of the various compone3nts of the Division of Family and Community Services and I would be happy to address any questions that you might have."

Senator Compton thanked **Mr. Deibert** for his presentation.

David Butler, Deputy Director and Division Administrator of Management Services, and acting administrator of the Information Technology Division., presented the Overview for the Division of

Management Services.

David Butler's testimony is as follows:

" Good morning, over the last three days, you heard many interesting facts or snippets of information. On Tuesday Karl Kurtz, our Director and inspiration, provided a general overview for you. An inspiration because he continued to provide guidance for the Department during his battle with cancer. Dick Schultz from Health followed describing Emergency Medical Services, Laboratories and how to deal with West Nile Virus being transmitted by alligators in Idaho. Yesterday, Greg Kunz of self reliance let you know about eligibility, a topic that sounds simple can be very complex. He also gave you a name and face to associate any child support inquiries you might receive. David Rogers of Medicaid spoke to you of Idaho's financial struggles that are not unique and represented the big blue circle on all your handouts. And finally this afternoon Ken Deibert of FACS described how his Division is the meat and potatoes of service delivery to the clients of Health and Welfare and citizens of Idaho. Each of these individuals has described the direct services that the Department provides and each has an extreme passion for their area."

"I now stand before you to discuss indirect support. While, I realize that in comparison to my colleagues, indirect support is not the most exciting topic, except to accountants and Senator Ingram retired, therefore I will try not to take up much of your time. The Department of Health and Welfare has approximately 2,900 employees (600c.o, 2,300 field and institutional). Indirect Support /Services supports the office and field staff and consists of 4 main operational areas."

"The office of the Director, Management Services, Information Technology and Human Resources."

"The office of the Director provides leadership, administration, policy, as well as, community and provider relations. The office consists of 38 positions located throughout the state. 20 people are located at the central office, while 18 are located in the field. Within the central office the positions are made up of Administration (4), the public information office (3), the rules unit (4), integration support team (6) and support staff (3). Field personnel include Regional Directors (6) and support and integration staff (12)."

"Management Services as I previously mentioned is the accounting arm of the organization. Within management services operates the budgeting, cash flow, internal audit, fraud, accounts payable/accounts receivable, facilities management, purchasing and payroll. Management Services has 133 positions, of which 72 are located in the central office and 61 in the field."

"Information Technology provides the technical expertise and support to ensure efficient use of our automated systems. I.T. has 112 positions in its organization, 99 in the central office and 13 in the field. We have two groups within I.T., development and operations. The operations group oversees the mainframe applications, hardware, software, security, and provides field support. The Development group has defined teams that

support each operating division. An interesting fact is that the state has (3) "pipes" going to the internet. The Department of Labor/Commerce has one, Revenue and Taxation has the second and the Department of Health and Welfare has the third. The interesting fact is that all agencies, except Labor/Commerce and Tax go through DHW's connection. Therefore, if our computer room has problems or interruptions regarding the internet, so will all other state agencies."

"The fourth and remaining Division is Human Resources. The Human Resources Division is comprised of 19 staff, 7 located in the central office while 12 are located in the field. Human Resources assists with employee personnel actions, skill development and coordinates annual employee reward and recognition efforts. Their hard work has touched each of the almost 2,900 employees within the Department.

These four groups comprise the area known as Indirect Support Services. Just as the field line workers in the operational divisions serve the clients and people of the state of Idaho. These are the state staff and organizations that serve and support the line workers."

"Indirect will be presenting one statue this year. It pertains to criminal history background checks for long term care facilities. We also have a decision unit connected to this legislation."

"The federal government intentions are on expanding background checks for providers and individuals working in long term care facilities.

"Congress has approved a pilot project to identify best practices and to understand the viability of the pending legislation."

"Idaho has been selected as one of 7 test states to participate and will do so, if given legislative approval."

"Currently Individuals working in, nursing homes, institutional care facilities for the mentally retarded (ICFs/MR), assisted and residential care facilities, long-term care hospitals/hospitals with swing beds, home health agencies, and hospice providers are not required to have back ground checks. The Department agrees with the federal government that this area is missing and could possible expose vulnerable clients."

"The federal grant will cover the costs of provider expenses and limited service state staff over the 2 year grant. Currently IDHW has 5 full time staff and 5 part time employees who process approximately 15,000 background checks per year, in effect, this pilot will almost double the current workload (88% increase) (13,300 more per year)."

"The Department of Health and Welfare will be requesting for SFY2006, 7 limited service FTE's and spending authority of slightly over 1 million pertaining to the federal grant."

"The 7 new limited service staff will provide multiple fingerprinting and processing locations throughout the state (one in each region) and will provide training and outreach to providers."

"With legislative approval and JFAC spending authorization the new background checks will begin in the fall of 2005 and continue through

September 2007. Again, all cost will be covered by federal funds with no use of general funds. This effort would not be possible without the support of our private partners and service providers. Prior to applying for the grant, IDHW met with many of the provider associations to establish an agreement of support pertaining to expanding the criminal history background checks. Based on this team or joint approach, the Department has received support from, The Idaho Health Care Association, Idaho Assisted Living Association, ICFs/MR Association, Hospice Association, Home health association, and The Idaho State Police Bureau of Criminal Identification."

"Indirect's second decision unit pertains to the in-sourcing of some of the Department's contract staff. By in sourcing work, the state can save approximately $3 million over 21/2 years. The conversion of staff would take place over an 18 month time frame, and would introduce new workers on a phased in schedule. 21 FTE would be introduced over the second half of fiscal year 2005 and up to 20 more FTE's over the 2006 fiscal year. The current I.T. Contract costs the state approximately $5.0 million per year. We can reduce this amount by approximately $2 million per years."

"How and why can we do this? When the Department of Health and Welfare went to a contract staff operational model, the Information Technology business was in a "boom" time. The dot.com sector was the hot arena, Y2K programming was in full mode and IT professionals were in great demand and commanding premium salaries. Since that time, we have witnessed the dot.com bust, and Y2K is behind us. These factors along with 4 plus years of I.T. Graduates have put an abundance of qualified I.T. professionals on the market. This abundance has significantly reduced the compensation required to hire excellent I.T. professionals. To generate the savings we will have a transfer of funds to different expenditure categories. The fund transfer will increase personnel for salaries and wages while the off setting reduction will come from operating costs. For 2006 we are requesting the in-sourcing of up to 20 more FTE's. Again the phased in approach would allow for potential savings in 2006 and actual savings in 2007. By combining these two actions, the supplemental and the decision unit, IDHW can provide dollar savings of 150K in 2005, 955K in 2006 and a fully implemented projected savings of 1.93 million in 2007 These are not just proposed savings, these numbers, I believe, we can achieve, and therefore if approved, our decision unit show the 2005 and 2006 reduction in DHW's appropriation request."

"Indirect Service third and final decision unit is for $267,000. These funds will cover the costs to move call center activities for our electronic benefits to the United States. Currently the Department receives 150,000 phone calls per month regarding their electronic benefits. Of these 150,000 calls, approximately 1,100 or 0.7% are handled offshore. Idaho is not alone in this effort. JP Morgan (formerly Citibank) provides call center services for 38 states. The Department was negotiating with 30 other states as a joint effort to reduce the cost of on-shoring this service. However, federal legislation was not passed requiring the o"on-shoring" of

some governmental services, this some of our partnering states are no longer pursuing this option. We, however, still feel that it is the right thing to do."

"The final discussion is the Indirect Support Services budget. Our original 2005 appropriation was 39.8 million, with our 2006 budget request is for 36.7 million or a 3.1 million reduction or 7.7%. This reduction is largely attributed the reduced need for spending authority of federal funds. Over the past 3-4 years the Department has had several large I.T. projects. This created the need for spending authority, which based on our current projects isn't necessary for SFY 2006."

"As Chairman Compton pointed out on Tuesday, the germane committee doesn't desire all the financial details of JFAC, but I wanted to share how Indirect Support Services money is spent. In 2004, 40% was Personnel (17.1 million), 58% operating (24.5 million) and 2% capital (0.9 million). Like the topic of the internet earlier, Health and Welfare is linked to many of the State's other agencies. Approximately $9 million dollars out of our 24.5 million in operating or 37% was paid to other state agencies including the state controller's office (payroll/accounting (750K), IDHR (600 total....60 indirect), the Department of Administration (2.8 million) and the Attorney General (2.3 million)."

"Thank you for allowing me this time to give you a brief overview of Indirect Support Services. "
Senator Compton thanked **Mr. Butler** for his presentation.

Adjourned

There being no further business **Senator Compton** adjourned the meeting at 4:35 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 17, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, and Kelly

ABSENT/ EXCUSED: Senator Werk

GUESTS: See attached sign-in sheet

The rules review meeting was conducted by Vice Chair Broadsword.

DEPARTMENT OF HEALTH AND WELFARE - RULES REVIEW

16-0201-0401 **Health Professional Loan Repayment Program** - a pending rule was presented by **Mary Sheridan**, Rural Health and Primary Care Supervisor for the Division of Health.

The Office of Rural Health and Primary Care promotes access to quality healthcare services in rural and under served communities. The 2000 Idaho Legislature replaced the Health Professional Loan Repayment Program in statute with the Rural Health Care Access Program. This chapter of rule, regarding the Health Professional Loan Repayment Program, went into effect in 1992, under the authority of Idaho Statute Title 39, Chapter 59 passed in 1991.The new program is not limited to loan repayment, and provides more options for improving access to medical and dental services in under served areas. The final payments for the loan program were received in February 2004 and the program has ended.

The entire chapter is being repealed as it is no longer being used as of February 2004. The Division of Health is requesting that the entire chapter, Health Professional Loan Repayment Program rules, be repealed. No negotiated rule-making was needed.

MOTION: A motion was made by **Senator McGee** to approve Docket No. 16-0201-0401. The motion was seconded by **Senator Coiner**, and the motion was **carried by a voice vote**.

16-0203-0401 **Emergency Medical Services** - was presented by **Dia Gainor**, Bureau Chief of the Bureau of Emergency Medical Services (EMS), in the Division of Health. This rule does not impact other Department of Health and Welfare chapters. However, the Idaho State Board of Medicine IDAPA 22.01.06 rule will be updated to match the changes in this docket pertaining to the new EMT-I scope of practice and medical supervision requirements.

Emergency Medical Technicians and Paramedics respond to critical illness and injury situations, often saving lives with their skills. In most rural areas of Idaho there are no Paramedics, which threatens the safety of Idaho citizens. This rule establishes a new level of EMT provider, the EMT-Intermediate. The EMT-Intermediate is a level between an EMT and a Paramedic, and was created primarily for rural volunteer EMS agencies to use. An EMT-Intermediate will be able to perform selected life-saving Paramedic skills. Without this rule change, the majority of licensed Idaho EMS agencies will be limited in the advanced life support they can offer in their communities.

Negotiated rule making involved the EMT-I Task Force of the state EMS Advisory Committee, EMS agencies, hospital representatives, and Idaho citizens. Regional staff, of the EMS Bureau, has also reviewed the rule changes.

Through the sections, numerous changes were made for consistency and clarity, including:

- "shall" changed to "must", "will" or "is"
- "pursuant to" changed to "under" - the term: "Paramedic Ambulance" which is an outdated term was changed to "ALS" (advanced life support). The ALS acronym was added to several Section titles for clarification.
- The term "EMT-I" was added to Sections 500 and 510.
- The word "intermediate" was replaced with "Advanced EMT" to clarify that Advanced EMT training standards are not being changed and a new definition was added for "Emergency Medical Technician-Intermediate (EMT-I)" references were updated.
- An EMT-I was added to the advisory committee to represent providers certified at that level.
- EMT-I was included in the initial training course types that require physician oversight.
- Name of the National EMS Education and Practice Blueprint was updated.
- Language dealing with Adult Instructional Methodology was revised.
- Other changes included minimum standards; removed documentation of compliance with local ordinances as a condition of filing an application with the state; classifies local EMS agencies using EMT-I personnel under a corresponding licensure level; lists operational standards for agencies utilizing EMT-I personnel, and added designation level for ALS agencies that do not transport patients.

Other items reviewed and discussed related to changing the words "shall" and "will", the strikeout language located on pages 45 and 48, testing EMS personnel, city and county licensure, county authority, several counties have incorporated firefighters as paramedics, and consideration of public comments received. **Dennis Stevens,** from the Department of Administration, agreed with Ms. Gainor's statements relating to public comments.

MOTION: A motion was made by **Senator Darrington** to adopt Docket No. 16-0203-0401. The motion was seconded by **Senator Brandt**, and motion

was **carried by a voice vote**. **Senator Keough** voted no, and she explained there are certain sections of the rule which she had not had adequate time to study.

16-0210-0401 **Idaho Reportable Diseases** - was presented by **Dr. Christine Hahn**, State Epidemiologist for the Division of Health. Idaho health officials can protect against the spread of serious and often fatal diseases by responding to reports of diseases occurring in the state. Disease surveillance enables public health officials to respond quickly to identify, investigate, and establish control and prevention measures to protect human health.

This rule supports the addition of two diseases to Idaho Reportable Diseases; Severe Acute Respiratory Syndrome (SARS) and West Nile virus (WNV). Adding SARS to the list allows health officials to respond quickly to contain the spread of this serious disease; West Nile virus reporting will allow health officials to track the spread of the disease in the state and promote health messages to protect people.

Severe Acute Respiratory Syndrome (SARS) and West Nile Virus (WNV) infection were added to this Section 020 to provide specific control measure guidelines for these diseases. Severe Acute Respiratory Syndrome (SARS) was added in “Day Care Facilities and schools in Section 025.

Timelines did not permit negotiated rule making. This rule change does not impact other Department of Health and Welfare Chapters.

MOTION: A motion was made by **Senator Brandt** to approve Docket No. 16-0210-0401. The motion was seconded by **Senator Compton**, and motion was **carried by a voice vote**.

16-0210-0402 **Idaho Reportable Diseases** - This rule, Docket 16-0210-0402, was also presented by **Dr. Christine Hahn**. This rule supports the addition of one group of diseases to Idaho Reportable Diseases; Transmissible Spongiform Encephalopathies (TSEs), including Creutzfelt-Jakob disease and variant Creutzfelt-Jakob disease (commonly known as the human form of “mad cow” disease). These diseases attack the brain and ultimately are fatal. By adding this group of diseases, Idaho health officials can work with diagnosing physicians to ensure that proper testing is done to verify the diagnosis, and methods are taken to inform other stakeholders and the public as needed.

MOTION: A motion was made by **Senator Compton** to approve Docket No. 16-0210-0402. The motion was seconded by **Senator Brandt**, and motion was **carried by a voice vote**.

16-0211-0401 **Immunization Requirements for Children Attending Licensed Day Care Facilities in Idaho** - Bureau Chief **Russell Duke**, Bureau of Clinical and Preventive Services, Division of Health, presented Docket 16-0211-0401. These rules update the necessary immunizations for children attending day care. The rules add a fifth dose of Diphtheria, Tetanus, and a-cellular Pertussis vaccine, along with a second Measles, Mumps and Rubella vaccine. Advisory committees for both the Idaho Medical

Association and the Center for Disease Control Prevention recommend these changes to improve children's defenses against these diseases.

Mr. Duke gives additional comments to the requirements. Some of the antigens within these vaccines tend to drop the level of immunity over time and additional doses will maintain a certain level protection.

- Tetanus booster doses - 10 years
- Measles - a 2nd dose increases to lifetime immunity. (1 dose =95%, 2 dose = 99+%) see Attachment #1.

MOTION: A motion was made by **Senator McGee** to approve Docket No. 16-0211-0401. The motion was seconded by **Senator Brandt**, and motion was **carried by a voice vote**.

16-0215-0401 **Immunization Requirements for Idaho School Children** - Bureau of Clinical and Preventive Services Bureau Chief **Russell Duke** also presented this docket, 16-0215-0401. These rules update the necessary immunizations the same as presented in docket 16-0211-0201 for children attending Idaho schools. The one year general fund commitment to implement these two rules (16-0211-0401 and 16-0215-0401) is $30,000, which is shared by federal approx 80% and state 20%. See Attachment #2.

MOTION: A motion was made by **Senator Darrington** to approve Docket No. 16-0215-0401. The motion was seconded by **Senator Brandt**, and motion was **carried by a voice vote**.

16-0219-0402 **Food Safety and Sanitation Standards for Food Establishments-Food Safety Replacement** - This rule was presented by Food Protection Program Manager **Patrick Guzzle.** He distributed a one-page outline about the comparison of the food code and UNICODE (see Attachment #3). He explained that the Food Protection Program provides inspections in food establishments and education to prevent food borne outbreaks that may lead to serious illness. These rules incorporate recommendations from the Idaho Food Safety Advisory group that includes the Idaho Restaurant and Retailers Associations, IDALA, Department of Corrections, private business owners and others interested in food safety.

These rules adopt recommendations from the Food and Drug Administration based on recent scientific research related to food safety. This research has resulted in tremendous improvements of food safety practices and increased knowledge to protect consumers. These rules (Idaho Food Code) replace food rules adopted in the early 1990s.

Executive Director of the Idaho Assisted Living Association **Michelle Glasgow**, a trade association that represents about 70 percent of the assisted living residences in Idaho, testified the Association supports the new rules regarding the FDA 2004 food code and accompanying changes in IDAPA rule. (See Attachment #4.)

Ms. Glasgow stated that the Department of Health Food Safety Division, Patrick Guzzle has been a model for cooperation between state agencies and providers.

Ms. Glasgow went onto report that during 2004, Patrick Guzzle called and met with her on several occasions to establish assisted living needs in regard to food safety rules. In fact, Mr. Guzzle visited several assisted living facilities of different populations and sizes to see for himself the unique needs of food preparation in assisted living. Food safety met with a wide variety of stakeholders in the food establishment industries to help determine if the adaptations asked for by the assisted living industry were necessary for the rules and safety for residents in assisted living.

Finally, Ms. Glasgow reported that Patrick Guzzle had worked to update the food safety training manuals so the state will still be able to provide food safety training for food handlers and especially the "person in charge." This course will not only be updated to meet the needs of the new rules, but will also eventually be available in Spanish. Patrick Guzzle spoke to several meetings of providers as he traveled throughout the state concerning potential changes and has offered to speak at the state association meeting in May to further communicate the changes and the reasoning behind the changes to providers.

MOTION: A motion was made by **Senator McGee** to approve Docket No. 16-0219-0402. The motion was seconded by **Senator Brandt**, and motion was **carried by a voice vote.**

16-0219-0401 **Food Safety and Sanitation Standards for Food Establishments (UNICODE)** was also presented by **Patrick Guzzle**. This rule repeals the entire chapter.

MOTION: A motion was made by **Senator Brandt** to approve Docket No. 16-0219-0401. The motion was seconded by **Senator Compton**, and motion was **carried by a voice vote**.

ADJOURNED: The committee adjourned at 4:00 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary/Recorder

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	January 18, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Brandt, Keough, McGee, Coiner, Kelly
CONVENED:	Chairman Compton called the meeting to order at 3:02 p.m.
MEMBERS ABSENT/ EXCUSED:	Senators Darrington, Werk
MINUTES:	Chairman Compton turned the meeting over to the Vice Chairman Broadsword to conduct the Review of Rules.

16-0226-0401

Russell Duke, chief, Bureau of Clinical and Preventive Services presented, Docket 16-0226-0401-Idaho Children's Special Health Program. This proposed rule change will ensure that the Children's special Health Program can continue providing services to Idaho's most vulnerable children who have serious medical conditions. The Children's Special Health Program provides care management and pays for direct care for children with specific conditions that include cardiac, cleft lip/cleft palate, craniofacial, orthopedic, PKU, CF, and neurological conditions. The proposed rules change eligibility criteria for the Idaho CSHP to uninsured children. We request this change for two reasons: 1.) Duplicating care coordinating services for insured. 2.) We cannot afford to provide services to all children who currently qualify for CSHP. Duplication: 40% on Medicaid - Health Connections. 50% Privately insured - primary care provider. Currently funding cannot support services for everyone funded by Funded by Federal Block Grant. Grant funding has not increased for over ten years. CARE costs have increased dramatically. If the rules aren't approved, we will have to discontinue all services to all children within the year. (See Attachment #1)

Senator Compton: When we moved on the 15185 CHIP-B program, was that a good idea in retrospect? Some felt it was quite a generous move. In your opinion was it a good move?

Russell Duke: From the Children's Special Health Program prospective, it provided more coverage for children than we were previously covering. So from a financial standpoint it made good sense for us. We were

covering 150 to 300 children and that will cover the 150 to 185 gap. It will reduce the number of children that will rely on the program in particular.

Motion

Senator Broadsword entertained a motion.
Senator McGee move that Docket #16–226-0401 be accepted.
Senator Brandt seconded.

16-0304-0401

Terri Meyer, Acting Deputy Division Administrator for the Division of Welfare, presented Docket #16-0304-0401-Food Stamps-Simplified Reporting. Rules governing the Food Stamp Program in Idaho. These rules have been in effect for over a year. Your approval of these rules as "final" represents Idaho joining 42 other states in adopting the pieces of the Food Stamp Programs across the nation. These rule changes provide more stable Food Stamp benefits to the individuals and families we serve. They also make the program easier for states to administer. First I would like to talk with you about how these rules help stabilize a Food Stamp benefit for families. These rule changes are the logical next steps to welfare reform. The main focus of welfare reform was getting people off welfare and into the working world. A number of supports were put in place to stabilize individuals and families as the gained employment and self sufficiency: Transitional Medical Cover Child Care. However, nothing was done to stabilize their Food Stamp benefit. Individuals often times went to work and found that their benefits either decreased or completely stopped. Next I want to talk with you about why it's important that the program become easier to administer. Over the past three years the demand for Food Stamps has grown dramatically. In 2001 we served approximately 60,000 individuals, compared to 2004 where we served slightly more than 93,000. During this same period of time our staff was reduced by 22% or 150 individuals. These rules simplify administration of the program by standardizing the periods of time families receive Food Stamp benefits, standardizing the things they are required to report to us and eliminating numerous case actions. There are three major changes in these rule: First a standardized Certification periods and reporting requirements. Second, a further standardized calculations for utility costs. Third a change in how we verify information from participants. In the first change, these rule changes combine three certification periods or lengths of time with different reporting requirements. The three certification periods or lengths of time are three months, six months and two years with a full review at one year. What this means is at eligibility each individual is assigned a certification period, and the corresponding reporting requirements, that go with it. They can count on their Food Stamp benefits not changing during that time, unless there are changes in their; income, household expenses, composition of their household or their assets. They are however, required to report all those changes to us. This change is a huge improvement in both stabilizing a families Food Stamp benefits and making the program easier to administer. Under the old rules participants were required to report nearly every increase or decrease in those four areas mentioned and states were required to take action on all of them, even if it resulted in little or no change in the families

Food Stamp benefits. Now, over half of our population are six months or semi-annual reporters and this group, primarily the working poor population, we most want to stabilize in the working world. States are federally mandated not to take action on any change that would decrease their Food Stamp benefits. We are required to take action on those actions that would increase their Food Stamp benefits, until the point at which their income reaches the limit of 130% of poverty at which point their Food Stamp benefits are stopped. The second major change builds on the standard utility allowance that previously existed but only took into account heating and cooling expenses. Now all utility costs are considered; phone, water, garbage, etc., are now standardized into three deductions; a standard deduction, a limited deduction and a minimal deduction. The third change focuses on the way we verify information from participants. The old way, nearly all financial information that we requested from our participants required that they bring proof with them. They brought proof of their wages, proof of their earnings, proof of the value of their car, those kinds of things. With these rules, automated interfaces with Social Security Administration, Idaho Department of Labor and the Department of Transportation are considered adequate proof and replace the need for participants to bring this information to us. (See Attachment #2)

Senator Compton: Tell me what you take in place of these documents. What kind of verification do you get? You said that they don't have to bring the other documents, what did you just say?

Terri Meyers: Previously they brought a statement of the worth of their vehicle and we referred to the blue book for the value of their vehicle. Now we can check on line now to see which vehicles they own.

Senator Broadsword: Follow-up to Senator Compton's question. Now you go to the Department of Transportation website and any vehicle listed to them you are no longer relying on.

Terri Meyer: That is correct.

Terri Meyer continued: These rule changes help to stabilize a family's food budget, and simplify the program for both participant and state's responsible to administer them. I ask for you to pass the recommendation and I now stand for questions.

Senator Compton: Some of us in this room sat in JFAC meeting this morning and there were great discussions about Food Stamps and the air in Food Stamp. We got dinged by the feds and that is apparently on a slope to control. But at the same time, this simplified reporting went into place and it is kind of two parts there. When did it go into place as simplified reporting?

Terri Meyer: Approximately a year ago.

Senator Compton: A year ago simplified reporting went into place which was designed to cut down on manpower and the people needed to do the processing, right?

Terri Meyer: That is right.

Senator Compton: Help me to understand this cause it's one of these things that need a lot more people to do the Food Stamp applications, we put in place, to simplify the reporting structure, but seemed to me to reduce a heck of a lot of labor. We seem to need a lot more people. Help me to understand that.

Terri Meyer: To understand your question and answer we need to back up in time for about three to four years. Looking at the case load growth over that time, we have experienced a 30% increase in case load and a 20% reduction in staff. To continue to do the work we did even just prior to the reduction, the request for staff would be much larger that you are seeing today. I think the request is for 43 positions for the Food Stamp Program. To keep pace with the work, I can't remember the exact number, but I think it has tripled that number, to do the work as we were doing it before the reduction.

Senator Compton: That is a good explanation. Have you any qualifications as to the manpower or estimate by going to the simplified reporting what that may have saved on manpower?

Terri Meyer: No I don't have that.

Senator Compton: We don't have to resolve that before we get through this rule, but later we would like to discuss that before we get through the business on this committee.

Terri Meyer: I can do that.

Senator Compton: In your opinion Terri, speaking of the honor system and the accuracy of the reporting system and putting people more on their honor and not demanding too much and not auditing so often, in your opinion, is it more defraud and do you think the system is being taken advantage of. Has it been made too lenient or has it been worth the price?

Terri Meyer: there are two parts to your question. The first part actually is when you referred to putting people on their honor, using the automated interfaces probably gives us better information that is available to all. So we probably have more accurate information that we ever did before by relying on the automated interfaces. The second part of your question as pertains to fraud as for the Food Stamp Program, it is regrettable that people think that there is as much fraud as there is. In the Food Stamp Program, in the research that we have done, indicates that there is only one quarter of one percent of fraud in our state is attributable to Food Stamps and Food Stamp participants.

Senator McGee: Ms. Meyer, as I look through our material I see that there are a lot of references under the column of Rules Changes based on public comment. Most of the Rules we've seen thus far have not had that volume of comment. Can you explain to me why?

Terri Meyer: The origins of these rules are essentially federal mandate to states and it is really difficult to enter into a negotiated rule making process with the public when essentially there are some things we don't have any choice in and we are federally mandated to carry those things out.

Senator Kelly: Terri, to follow-up on Senator McGee's question, was there public comment received on this rule, the proposed changes, during the rule process, not negotiated rule making, but during the regular publication process?

Terri Meyer: We commented as a state entity on our own rules. There were no public hearings that I am aware of to hear public comments on the rules.

Senator Kelly: Were written comments submitted?

Terri Meyer: Not that I'm aware of.

Greg Kunz, Acting Administrator, Division of Welfare: Relating to the question of the number of FTP, our estimates at this time are 16 FTP are save directly from time staff would be required to process applications.

Motion: **Senator Broadsword** entertained a motion.

Senator Compton moved that Docket #16-0304-0401 be accepted.

Senator McGee seconded.

Motion was carried by a **Voice Vote.**

16-0301-0401 **Robin Pewtress, Coordinator for the Children's health Insurance Program (commonly known as CHIP) for the Department of Health and Welfare in the Division of Medicaid presented Docket #16-0301-0401-eligibility for Medicaid for Families and Children - CHIP-B Eligibility Criteria**. These rules describe the eligibility requirements for the CHIP-B and Children's Access card Programs. They support the legislative intent to, create a capped expansion of CHIP for 150% to 185% of federal poverty, and give families a choice between enrolling their children in CHIP and a new Access Card Program. Please refer to the handout entitles "CHIP-B and Children's Access Card Programs", which illustrates the programs basic components. In the pink box illustrates our true dedicated program for children. For different age levels it goes up to a different poverty level. A little further up the poverty level changes here. The dark blue box is our current CHIP-A program. In the light green box which is on top of the CHIP-A program, goes from 150% to 185% of poverty. Then the Children's Access Card Program as presented in the light blue, which gives the children a choice between if they qualify for either CHIP-B or CHIP-A program, they have a choice of being on the Children's Access Card project, rather than being on a direct benefit program. This concludes my presentation to the committee on this docket. I respectfully ask the committee to adopt these rules as final. This will reaffirm support for increasing the health coverage options available to the children of Idaho. I now stand for questions. (See Attachment #3)

Senator Compton: we passed this 150% to 185% and we are very proud of this. Now I'll ask you, was that a good idea, and has this worked out well? What are your comments on it? Share your information with us if you will.

Robin Pewtress: My personal feeling is that I am very proud of this program and I think you did the right thing by creating a second CHIP program for the higher income level.

Senator McGee: I would just ask if we have success stories and the number of kids that have been enrolled in this program at this point and just a little more detail about that.

Robin Pewtress: We have approximately 1600 children enrolled in the new programs, but over the summer we heard we had enough money for about 5600 children. We are not sure where those children are, we still believe they are out there. They do consistently present applications for processing daily, so we are adding children all the time to this program. It has not slowed down.

Senator Compton: To follow-up, it's just that it is lower that we anticipated when we put it in place, is this right?

Robin Pewtress: That is correct.

Senator Compton: I voted for this legislation, but do you find that there is some confusion with the parents whose children are in need of this program? Do you find that they do not understand what their options are in column A and column B?

Robin Pewtress: We have noted some confusion. Basically if they want anything, they can get help for it. If they check both boxes on the choice form, they are then contacted personally on the phone to talk about what their real choice is. They don't seem to understand real clearly that they need to make a choice between the programs. They seem to think there are different criteria for the different programs.

Motion

Senator Broadsword entertained a motion.
Senator Brandt moved to approve Docket #16-0301-0401.
Senator McGee seconded.
Motion was carried by a **Voice Vote**.

16-0318-0401 **Robin Pewtress presented Docket #16-0318-0401 - CHIP-B and Children's Access Card-Covered Services**: These rules describe the medical services covered by CHIP-B, the conditions for provider reimbursement, and the requirements for insurance companies to participate in the Children's Access Card program. These rules support legislative intent that CHIP-B have fewer benefits as compared to the current CHIP. They also support the enabling legislation to provide reimbursement of insurance companies of up to $100 per child, for each month private insurance is in effect, with a cap of $300 per month per family. Specific examples of services covered by CHIP-A, but not covered bythe new CHIP-B program are routine dental services, durable medical equipment and long-term care. There is also a hand-out sheet with benefit comparisons. This concludes my presentation to the committee on this docket. I respectfully ask the committee to adopt this pending rules as final to increase the options for health coverage available to the children of Idaho. I now stand for questions.

Motion **Senator Broadsword** entertained a motion.
Senator Brand moved to approve Docket #16-0318-0401.
Senator McGee seconded
Motion was carried by a **Voice Vote**.

16-0318-0402 **Robin Pewtress presented Docket #16-0318-0402 - CHIP-B and Children's Access Card - FEE DOCKET - Co-Pay and Premiums**.

These rules implement the participant cost sharing requirements for the CHIP-B program and support legislative intent that the CHIP-B children are required to pay a premium of $15 per mont per eligible child. This concludes my presentation to the committee on this docket. I respectfully ask the committee to adopt this pending rule and final to increase the options for health coverage available to the children of Idaho. I now stand for questions. (See Attachment #4)

Senator Keough: Does this mean if a family who is not eligible, because they did not pay their premium, can't get the insurance for a year. But after that can go back on without paying that past premium?

Robin Pewtress: That is correct.

Senator Keough: Can you tell me why that can do that? I know I couldn't do that if I did not pay my premiums.

Robin Pewtress: The idea was to show compassion for the lower income. That way it was not put on their credit record for a very small amount of money. We would look at them to see if they were medicaid eligible before we would call them delinquent.

Senator Compton: The premium is $15?

Robin Pewtress: Yes.

Senator Compton: What experience have you had with the reluctance to pay, or willingness to pay? Where I am going with this, is that later on in this committee and other committees some discussion about co-pay and this is a co-pay, will happen. What is the reaction with this and what is the general tenure of these folks?

Robin Pewtress: We have been collecting pretty well. I don't know what the percentage is, but we have collected more that $45,000.

Senator Broadsword: This is a clarification. This is for an insurance premium, not for a co-pay?

Robin Pewtress: That is correct.

Senator McGee: Just a follow up to Senator Keough's question. Have we had anyone who has fallen under the category that Senator Keough referenced?

Robin Pewtress: There was a way we structured the program provision is after the first year and they are two payments behind at 12 months of eligibility, then we won't review their eligibility for one year. So at this point we are not looking at dinging anybody.

Senator Compton: The object here is not to collect the $15, but to make sure they are covered, although we would like for them to pay it. But that is not the major issue, right?

Robin Pewtress: That is correct.

Senator Brandt: Although I understand where we are going on this program, I think we should help people become more responsible. We are giving them this program anyway. If they can just cycle through the program, I have a little hard time with that.

Senator Broadsword: Is that a statement and not a question?

Senator Brandt: A statement.

Senator Compton to **Senator Brandt**: I agree with you, but what happens is that they take them off the program if they miss two payments, they are cancelled.

Senator Brandt to **Senator Compton**: But for a year and then they come back and get to play the game again.

Senator Compton to **Senator Brandt**: But they are probably older and wiser and more responsible by then.

Senator Broadsword: I have a question regarding a code that the department made, requiring a co-pay for some services, has that been defined?

Robin Pewtress: No, it has not.

Senator Broadsword: When it is, will you bring it before the legislature or will it just go into effect?

Robin Pewtress: We are looking at doing a temporary rule, after we have our systems in place to do a co-pay.

Motion

Senator Broadsword entertained a motion.

Senator McGee moved that Docket #16-0318-0402 be accepted. **Senator Kelly** seconded.

The **motion** was carried with a **Voice Vote**.

Senator Keough voted no and wanted to be noted as a compassionate person.

16-0309-0401

Dr. Selma Gearhardt, Pharmacy Services Specialist for the Division of Medicaid presented Docket #16-0309-0401 - The Medical Assistance Program - Coverage of OTC Drugs. The department is requesting this pending rule by approved as final. This rule docket was approved as temporary during the 2004 Legislature. This rule will allow Idaho Medicaid to provide our participants with the right drug at the right price. The purpose of this rule is to allow Idaho Medicaid to cover certain over the counter medications when they can be substituted for a more expensive prescription medication. Several widely prescribed drug products have changed status and are now available over the counter. Based on appropriate criteria, the department needs to be able to include these nonprescription medications in order to contain Medicaid program expenditures to meet legislative appropriation. This rule will benefit the public by allowing physicians to prescribe equally effective medications at a lower cost to the department. With the temporary rule in place, the department has been able to include Prilosec OTC in the Medicaid Pharmacy Program. Prilosec was formerly available only by prescription. Under this rule, a physician may now write a prescription for Prilosec at about an eighth of the cost of the prescription version. The estimated savings for the first year the rule was in place is $425,000. Prior to the creation of the proposed rule, Medicaid excluded payment for non-prescription drug products based on appropriate criteria. This rule provides an important tool to manage costs while allowing us to continue the delivery of quality care to our Medicaid clients. This concludes my presentation to the committee on this docket. I respectfully ask the committee to adopt this pending rule as final. I stand for questions. (See Attachment #5)

Senator Broadsword: How did you inform physicians that this pending rule was in place and it was able to be used?

Dr. Gearhardt: We have about five different ways to go about informing the physicians. First there is a publication called “Medicaid” that goes out with different information that we need to provide to our providers. We also in a circumstance like this, where it is really a change, we do an information release which is a direct mailing to physicians. We also have our website that they can go into to get updated forms. There is a banner that circulates, so there are a lot of ways to inform the providers.

Senator Broadsword: Do you find this system is being utilized statewide or is there one area more apt to be providing this service than others?

Dr. Gearhardt: Right now, Prilosec OTC is the only over the counter product that we cover. When we first started the coverage it did have to have prior authorization because the entire class what is called Proton Pump Inhibitors requires prior authorization. We have moved through the pharmacy and therapeutic committee to make it a little bit easier so it can help them through that choice, and this is a good choice. There are three of the Proton Pump Inhibitors that now do not require prior authorization. It pretty much goes through the system blind based on that choice.

Senator McGee: Are there other medications that you are looking at that might fall under this category?

Dr. Gearhardt: The one we are looking at currently is Claritin. Claritin is available over the counter. We pay for it now by prescription only. So we pay for the more expensive prescription version. It is actually somewhat difficult, we take it first to our pharmacy and therapeutics committee which is a team of doctors, physicians assistants and pharmacists through out the state and it has to go through numerous processes and that's why we are working on it.

Senator McGee: Follow up, so Dr. Gearhardt there is an active effort then, to search out other over the counter medications that may be the same as prescription medications. The department is working to discover this, is that correct?

Dr. Gearhardt: We are looking for over the counter. We are looking for very specific one at this point and we will move to include those as we are able. It could potentially include any over the counter product, but again we have very specific criteria so that we manage this program wisely.

Motion

Senator Broadsword entertained a motion.
Senator Brandt moved that Docket #16-0309-0401 be accepted.
Senator Compton seconded.
Senator Broadsword asked if there was any further discussion.
Joann Conde, Assistant Director of the Idaho State Pharmacy Association. We have felt for years that it would save the department a lot of money. We are very happy that this is finally coming around.
The **motion** was carried by a **Voice Vote**.

Senator Brandt commented: I just wanted to comment, not that we did every thing right the last couple of years but something that the presenters did do last year, Senator Kelly brought this up, they did state whether or not there had been any verbal or written comments received on the rule right up front.

Adjourned

Senator Compton adjourned the meeting at 4:02 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 19, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Kelly

MEMBERS ABSENT/ EXCUSED: Senator Werk

CONVENED: Senator Compton called meeting to order at 3:02 p.m. He then turned the meeting over the Vice Chairman Senator Broadsword.

MINUTES:

16-0317-0401 **Paul Leary, Bureau Chief in the Division of Medicaid, presented DOCKET #16-0317-0401 - Service Coordination - Service Plan Time Frames.**

These rules are being changed at the request of the House Health and Welfare Committee during the 2004 Idaho Legislature Session and in response to a petition for rule making received from the Case Management Association of Idaho. The substantive changes all relate to Medicaid participants getting the right services at the right time. The rules changes the time requirements for developing an initial service plan from 30 to 60 days for those individuals receiving developmental disability services, personal care services, and early and periodic screening, diagnosis and treatment (EDSDT) services. The department agreed to make this rule change at the presentation of the Service Coordination rules to the house health and Welfare Committee during the 2004 Legislative Session. This change was made to meet the needs of these three specific populations of Medicaid participants and assure that they received the right service at the right time. In response to a petition for rule making the following change was made. First, the rule change states that face0to-face meeting between services coordination must occur at least every 90 days. Although there is a requi9rement for at least monthly contact in the current rules no specific time is mentioned for how often face to face contact must occur for these two Medicaid populations. Additional language was added to the rules to reinforce that the type and frequency of contact between the Service Coordinator and the Medicaid participant must be based on the needs of the individual receiving the services. Second, other changes simply added clarifying language to the rules. Again, the substantive changes in the docket are to assure that

medicaid participants receiving service coordination get the right services at the right time.

We received one comment questioning whether or not 30 day face to face contact between Service Coordinators and participant should be required. Review of the minutes of the negotiated sessions clearly showed that the intent of the group was to retain the 30 day requirement for Mental Health Service Coordination and that all other participant populations are based on the need of the participant. (See Attachment 1, Page 2)

Paul Leary concluded his testimony asking the committee to adopt this rule as final. He stood for questions.

Senator Broadsword asked if there were any hearings and if there were any written comments filed on this particular docket.

Paul Leary stated that there was one comment that came from within the department as to whether or not 30 day face-to-face contact should be required. He also stated that there were no hearings, however, there was a response to a petition for role making from a provider association.

Senator McGee asked if this was basically to improve customer service within the department.

Paul Leary stated that this was correct. It's improving customer service and it's getting the right service to the participants at the right time. One of the issues that we ran into was when we combined four different sections of rules into one chapter. When we did that we really combined Service Coordination, Mental Health participants with DD and so consequently we picked the shortest time period for the mission. In the initial service plan, it didn't make much sense for all population, for the mental health population that's very important, but for other population you would need a longer time frame so you can do the testing, the analysis , so you can get the right services.

Motion

Senator McGee moved that Docket #16-0317-0401 be accepted.

Senator Darrington seconded the motion.

Motion was carried by a **Voice Vote**.

16-0309-0403
16-0411-0401
16-0417-0401

Paul Leary, Bureau Chief in the Division of Medicaid presented the following dockets: #16-0309-0403, #16-0411-0401, and #16-0417-0401.

These dockets represent changes to rules as a result of the adoption by the 2004 Legislature of the Service Coordination rule chapter, IDAPA 16.03.17, that consolidated four sections of Medical Assistance rules pertaining to Case Management Services. These sections of rules were consolidated to assure consistency across populations receiving service coordination and to clarify expectations for both the department and providers.

The following dockets all represent changes to sections of rule as a result of this consolidation.

The first rule addressed was Docket #16-0309-0403 - The Medical Assistance Program - Service Coordination - Alignment with PCS Rules. To avoid duplication and confusion these rules are being changed to delete the sections of the Medical Assistance rules that covered Case Management. These sections of rules are now covered in the Service Coordination chapter (IDAPA 16.03.17) and includes new references to the Service Coordination chapter (IDAPA 16.03.17) and changes some terminology that deals with Case Management so it is consistent with the terminology used in the Service Coordination Chapter. (See Attachment 2, Page 3)

Senator Compton wanted clarification that there were no benefits being changed and that it was just correcting the terms so that the terms throughout the dockets are all the same, so when you refer to one place it means the same as the others.

Paul Leary stated that was correct.

Senator Compton wanted assurance that there were no benefits being changed and there was nothing the committee should worry about and to be sure there were no objections to any changes being made .

Paul Leary stated that this was absolutely correct, in fact, these changes could have been made last year, however because some of these rules were open for other reasons they did not want to risk having trhe Service Coordination chapter be not accepted and having some changes be accepted that might be uncomfortable.

Senator Compton followed up the 411 and 417 both said definition consistency and 309, which you want to put in this, talks about alignments with PCS rules. Senator Compton wanted to know if these were all the same approach or was 309 different from the other two.

Paul Leary stated the Chapter 309 had the sections of base management in it before. He stated that those were being deleted out of 309 because those sections now appear in 317, 411 and 417. He stated that they are simply carried to the Medical Assistance chapter which now point to the Service Coordination chapter.

Motion

Senator Compton moved that Dockets #16-0309-0401, #16-0411-0401 and #16-0417-0401 be accepted

Senator Brandt seconded the motion.

The **motion** was carried by a **Voice Vote**.

16-0309-0311

Leslie Clement, Acting Deputy Administrator with the Medicaid Division, presented Docket #16-0309-0311 - The Medical Assistance Program - Mental Health Clinic Hours Limit.

The Department first brought temporary rules before the Legislature in order to reflect changes in responsibility for conducting assessments and planning, and also attempted to incorporate some new service definitions and provider expectations in order to better meet the needs of individuals with mental illness. The Department held three (3) public hearings which

were well attended and received many written comments. While there was significant agreement on a number of the proposed changes, there was also some confusion and disagreement. She stated that some of you will recall that these rules were extended by the 2004 Legislature as temporary rules based on the Department's assurance that it would continue to work with stakeholders on amendments. The Department took this opportunity to begin working with its private partners to improve mental health benefits for Medicaid recipients. Perhaps the most significant outcome of our work group was establishing the relationships with consumer advocates and providers that will enable us to work through future challenges in a collaborative manner. The work group included Legislative Representatives from the House Health and Welfare Committee, Representatives from the Mental Health Provider's Association, consumer advocates representatives and employees from the Department. There was an acknowledgment by those participating in this process that we were taking the first step in a long process needed to improve Medicaid's Mental Health Coverage System. It took about six (6) months to reach an agreement on the rule amendments that are before you today. The work group produced amendments to this pending rule docket that achieve three (3) primary objectives that ensure participants receive services in safe environments, by qualified providers and have treatment plans and services that are individualized and responsive to individual needs. Amendments have been incorporated into this docket with all but one change implemented until this year's legislature approves this docket and participants have been given notice of this change and providers have been informed through medicaid's Information Release process.

There were a number of issues that have been addressed regarding services provided in partial care clinic settings. Partial Care services are intended to be provided in the least restrictive environment, focus on individualized service plans, and reflect interventions that are uwed to meet treatment goals. The work group took the opportunity to address what they felt was an excessive amount of allowed services by recommending that the partial care services per week be reduced from 56 to 36 hours. The projected savings resulting from this reduction is estimated tobe over $500,000 over a twelve (12) month time frame based on current caseload and the current number of providers.

As one member of the work group commented— these rules, as amended are much more than a step in the right direction –we have made a huge step forward.

No one on this work group will tell you that we've fixed the system. But everyone will tell you that we have made important progress. Today –we have safeguards in place that we did not have prior to the effective date of these rules. We have agreed on definitions of services that were previously unclear and we have set the stage in these rules by focusing on individualized planning and treatment.

Whereas we've focused on these rules up until this point, we plan to expand the scope of our Medicaid mental health systems planning and have begun to invite other key stakeholders to the table. Our next

initiative, if funding is approved, will be to develop Medicaid provider application process that will give us confidence that our Medicaid providers have the demonstrated skills and experience to help individuals meet their recover goals.

Leslie Clement respectfully asked that the committee approve these pending rules as final. She stood for questions. (See Attachment 3, Page 5)

Senator Keough inquired about the financial savings to these rules. Then asked if there were added costs that could be incurred as a result of the changes in these rules.

Leslie Clement stated she thought for the Department and for Medicaid there were no additional costs associated with the changes in these rules. She thought that the providers would say there were some additional administrative requirements that result in some cost to their business.

Senator Coiner inquired about the change in the 56 to 36 hours and wanted some more information.

Leslie Clement stated that Partial Care was a day treatment program for children and adults with mental illness. She said they don't need some diagnostic requirement, but that they do have to have a physician's referral. She stated that unfortunately this particular service, over the years, has often been referred to as being used inappropriately as babysitting. It did not have that therapeutic piece to it. That's why a lot of time was spent with these rules, making sure that this was a therapy that we are paying for out of Medicaid funds. When you think about it in that context, and you think about someone receiving therapy service for 56 hours a week, all those with clinical expertise around the table, said that was too much. That it was too much for any individual to reasonably receive.

Senator Broadsword wanted to clarify that they had held three(3) hearing on this particular issue and received a lot of comment on this. She asked if they could give an approximation on how many people came to the hearings and if all their needs were addressed.

Leslie Clement stated that she wanted to give some background to clarify things. These were hearings when the rules were being developed as temporary rules, prior to this last calendar year. It was before the last session that we had the hearings. She stated she didn't have the actual number of attendees , but they were pretty well attended and stated that maybe some of those who are here today could testify to that. They were about some of the service definitions and they weren't always on the same page as we were about what needed to be done. That's why when we came last year to this committee there was some opposition to these rules and that's the result of what's before you today.

Senator Broadsword asked if she felt she had adequately addressed those concerns.

Leslie Clement stated that she did.

Senator Darrington stated that he didn't have any objections, but was looking at the definitions on license practitioners. It states a clinical nurse specialist or a nurse practitioner to be able to prescribe psychotropic drugs have to have experience. How do they get the experience?

Leslie Clement stated that she didn't have a very good answer for that question. She explained that in other professions you would find that as well. She continued it's like when you are graduating from school and you are suppose to get a job, but don't have the experience. It is a dilemma that we have. One of the things we hope to do is to develop a credential system. It isn't just a laundry list of licenses and degrees, but actually going out on sight looking at the agencies, seeing how they have structured their programs that will demonstrate that they are really ready to provide mental health services.

Gregory Dickerson of Mental Health Provider Associates testified that they had participated in this work group over the past year in negotiating this set of rules. He stated that their association was one of the entities that were in partial disagreement with these rules last year. He stated that the rule negotiations were very beneficial to everyone involved. These are an acceptable set of rules. He continued that he wasn't going to tell you that these rules will work on into the future. There are significant amounts of work to be done in the mental health system. The rules and the reforms taht need to be put into place are yet to be. developed.

April Crandall, President of the Mental Health Providers Association of Idaho, testified that she would like to echo the presentation and testimony of both Leslie Clement and Greg Dickerson. She stated that our association has been working with the Department through the past year negotiating this docket of rules and discussing mental health reform. These rules will continue to need work as we improve and mold mental health services to better fit with the best practice. We fully recommend that the partial care hours be dropped from 56hours to 36 hours per week. She stated she did not know of any person that could tolerate treatment eight (8) hours a day, seven (7) days a week. The mental health work group is currently looking at credentialing businesses that provide consumer services, outcome measurement, and continuum of care to improve services and better use taxpayer dollars. Although the rules still need work, we respectfully recommend that you accept rule docket 16-0309-0311. Our association offers any education or clarification tat any member of the committee might need to better understand community mental health services. You can contact me at (208) 604-1018 or aprilcrandall@yahoo. Com. Thank you

Motion

Senator Brandt moved that Docket #16-0309-0311 be accepted.

Senator McGee seconded the motion.

Motion was carried by a **Voice Vote**.

16-0309-0402

Paul Leary, Bureau Chief in the Division of Medicaid presented Docket 16-0309-0402 - The Medical Assistance Program - Return of Unused Medications

This docket is being presented as a pending rule and applies to medicaid paying an administrative fee to pharmacies to receive returned drugs from Residential or Assisted Living Facilities and Nursing Facilities and can be found behind TAB15 in you Health and Welfare Rule Booklet.

These rules are being amended to allow pharmacies to be compensated for the work they do as a result of receiving returned drugs from Residential or Assisted Living Facilities and Nursing Facilities. The 2004 Legislature adopted changes in "Rules of the Idaho State Board of Pharmacy (IDAPA 27.01.01)," and the "Rules for Licensed Residential or Assisted Living Facilities (IDAPA 16.03.22)," which allow these facilities to return unused and unopened drugs and save costs to the Medicaid program. This rule amendment allows the dispensing pharmacy to receive payment fro Medicaid, for the added work associated with acceptance of returned drugs from medicaid participants, restocking, and submission of the claim reversal to Medicaid. There is a minimum return requirement to assure that this process is cost effective for Medicaid.

No comments were received in opposition to this docket. He respectfully requested the committee to adopt the pending rule as final. He stood for questions. (See Attachment 4, Page 7)

Senator Darrington queried that this rule was just to make it consistent with the legislation that was past. He wanted to know if this was correct.

Paul Leary stated that was correct.

Motion **Senator Darrington** moved that 16-0309-0402 be accepted.

Senator Compton seconded the motion.

Senator Darrington stated that there was a lot of work that went into this piece of legislation.

Senator Compton stated that we accomplished two things:
1. We resolved the issue on returning unused medications.
2. We saved money.

Senator McGee asked for and estimate as to how much we might save each year with this program.

Paul Leary stated that initial estimates for the Medicaid side between $150,000 to $200,000 per year. This is a voluntary program.

Michelle Glasglow with the Idaho Assisted Living stated she supported the bill.

Senator Broadsword stated there was a motion and a second and asked if there was further discussion.

The **motion** was carried by a **Voice Vote**.

There was discussion on medications being flushed down toilets and going into our water system. Senator Coiner wanted to know if anything was being done to resolve this problem.

Paul Leary stated that he was not an expert and did not have an answer.

Micelle Glasgow said that she and Mick Markuson with the Idaho state Board of Pharmacy met with DEQ this past summer and they are very concerned about the Boise River. There are a lot of medications from homes going into the system. There is a lot of discussion going on now about this problem.

16-0309-0404 **Chris Baylis, member of the Policy Team in the Division of Medicaid, presented Docket 16-0309-0404 - The Medical Assistance Program - Reviews of Nursing home Patients - Alignment with Federal Rules**.

This docket gives the Department an opportunity to streamline our process and focus on those most in need of a review. We are also able to more efficiently use our regional nursing staff.

1. Changes in Code of Federal regulations allow us to change our Medical assistance rules to match the language.

2. References to the deleted sections of the Federal Regulations were removed along with reference to quarterly review requirements.

3. Reviews now done based on need.

Chris Baylis requested the committees approval of Docket 16-0309-0404. She stood for questions. (See Attachment 5, Page 8)

Senator Compton queried as to how "need" was determined.

Chris Baylis stated the code of federal regulations eliminated the 90 day reviews and gave the state some options. We divided them into three (3) groups.

1. Those who were identified previously as having a mental illness.

2. Those who identified as likely to improve and leave nursing facilities.

3. Those who we pay a special rate. These would be special needs.

Senator Compton when you said "need", it would indicate to me that because of personal circumstances it would be to protect the case, if it were to be looked at, to be sure, they have the care that they should have. These are no exceptions, these are categories that need special care and need to be looked at more often. He wanted to know if this was correct.

Chris Baylis stated that this was correct. The nursing facilities staff would give their reviews of the participants. Those Medicaid clients that we have identified, we need to look at more often.

Senator Compton queried that if this also looked at the facility as well as the individual care that is required.

Chris Baylis stated that it does not.

Motion **Senator McGee** moved that Docket 16-0309-0404 be accepted.

Senator Brandt seconded the **motion**.

Motion was carried by a **Voice Vote**.

16-0310-0402 **Sheila Pugatch, Senior Financial Specialist in the Division of Medicaid presented Docket 16-0310-0402 - Medicaid Provider Reimbursement - Clarification of Covered Services in Nursing Homes.**

Senator Broadsword wanted to know if there had been any hearings held or any comments received.

Sheila Pugatch stated that there were comments received and that they had incorporated those comments in their book.

We are changing these rules to reduce misunderstanding between the department and the providers in order to build stronger partnerships.

The Department and the nursing Facility Prospective Payment Oversight Committee worked together to make changes to these rules to make them more understandable to both the Department and to the providers.

The rule changes clarify what types of expenditures Medicaid pays for in a nursing facility.

They also clarify the way rates are set for Medicaid reimbursement for individuals in a nursing facility who need additional special care. (See Attachment 6, Page 9)

Sheila Pugatch requested that the committee adopt this pending rule as final. She stood for questions.

Senator Compton queried as to the where the rate changes were in the rules.

Sheila Pugatch stated that behind TAB 17, page 136, section302 talks about development of the rate. It goes into details regarding Direct Care Cost Component and Indirect Care Component.

Senator Keough queried about page 127,.08 regarding Dues, Licenses and Subscriptions. Does that mean you reimbursed for subscriptions and periodicals?

Sheila Pugatch stated that they did reimburse for subscriptions and periodicals related to patient care directly and for general patient use.

Senator Keough queried as to the cost of these subscriptions and periodicals.

Sheila Pugatch stated that it was not very much, but could bring back some data if need be.

Senator Keough stated that a collective cost would be fine.

Senator Keough also queried on page 127, 09, Employee Recruitment. We would like the cost for that also.

Senator Broadsword asked **if Senator Keough** would like a delay in the decision of the rule under **Miss Pugatch** could get the committee the information requested.

Senator Keough that because there could be some financial implications she felt she needed clarification to these expenses.

Senator McGee agreed with **Senator Keough** that there were expenses that the committee had not seen especially the freshmen senators. He felt the delay in the decision on this set of rules was warranted

Senator Compton stated that **Senator Keough** had raised a couple of points here that needed to be looked into. He also wanted to know how the rates were configured and if they were reflected by some federal guidelines or what.

Sheila Pugatch stated that the rates were based on costs that are allowable which are defined in the rules.

Senator Compton inquired further as to the rate costs. He stated that his questioned was, “are there federal guidelines that they have established for states to use?”and your answer was yes, he believed.

Senator Darrington stated he didn’t see the rule as not being that difficult. But that he understood the reason to hold on to this for a couple of days before approving these rules. It would give them a chance to get the facts.

Senator Broadsword asked **Ms. Pugatch** how long it would take to come up with the figures requested.

Sheila Pugatch stated that it would not take longer than a day or two.

Senator Broadsword stated that she agreed with **Senator Keough** if there was a state expenditure we need to clarify exactly what that is and what we are signing up to do.

Senator Keough wanted to know if the nursing homes were 100% medicaid patience or a mixture and also there was a charge on page 130, line 21 about telephone book advertising. Does the federal guidelines allow us to take those pieces out or is it a federal mandate.

Sheila Pugatch stated that to the first question, the nursing facilities are a mixture of medicaid and medicare.

As to the second part of the question, we do specify that the ad is limited to a certain size. As far as Medicaid deciding what the cost will be reimbursed or not be reimbursed, as compared to Medicare Provider Reimbursement program, we do have the right to decide which costs we want to reimburse.

Senator Keough followed up to make sure she understood. So if she decided to pull those sections out, we would not get into trouble with the federal government.

Sheila Pugatch stated she would double check that, but she believed we

would not.

Senator Broadsword inquired if the amount medicaid allows are pro-rated by the percentage of medicaid patience in the facility compared to the private pay in the facility.

Sheila Pugatch answered that this was correct.

Motion

Senator Keough moved to hold **Docket 16-0310-0402** till January 24 for the additional information requested.

Senator McGee seconded the Motion.

Motion was carried by a **Voice Vote**.

Senator Broadsword returned the meeting over to **Senator Compton**.

Adjourned

The **meeting** was adjourned at 4:28 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 20, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED:

GUESTS: See attached sign-in list

CONVENED: Vice Chairman Broadsword called the meeting to order at 3:00 p.m.

MENTAL HEALTH COURTS

Judge Brent Moss , 7th District Court, Bonneville County
About five years ago in Madison County we started a Felony Drug Court. About a year into that Drug Court we found out that there were a number of people that we were working with and trying to serve that simply were not being served. On our Drug Court staff was Eric Olsen from the Department of Health and Welfare, who assisted with mental health issues. Eric and I decided there must be something else we could do to help these people that have more sever persistent mental illness. I contacted Judge Patrick Morris in San Bernardino, CA, who was running a Felony Mental Health Court. I went to California and spent a day with Judge Morris and his Mental Health Coordinator going through their system. I came back to Idaho and met with the Mental Health folks to let them know we needed housing, intense psycho social rehabilitation, jobs and accountability to make this program work. With the assistance of Mental Health Region 7 we got together a group of community players, private providers and a jail that was very interested in what was happening. We talked with prosecutors, public defenders, private health care providers and court clerks who all play a part in this plan. We agreed we were not making progress because there was no cohesive way of wrapping treatment around these individuals. These individuals were being sent for substance abuse or mental health care treatment, but neither service could assist the other with this issue. The Job Vocational Rehabilitation could not deal with these individuals until the other two problems were addressed. The Drug Court began on August 15, two and half years ago. We accepted some misdemeanor cases in the mental health program initially because they were looking at anywhere from 100 - 180 days in jail. The critical point in our program was the ACT Team who provides psycho social rehabilitation for these people. They go to the person's home to make sure they are taking their medication, going to their job, attending meetings and court appearances. Vocational Rehabilitation came on board and they have been working Actively to get the people a job once they are stabilized. If they are disabled they can work 20 -25 hours a week, if not they are required to work full-time. We

have six graduates who are all employed, have their own homes and doing well. It takes 18 months to two years to get anyone through the program. Another key fact or is to help the people identify the symptoms of their illness and how the medicine works on those symptoms. We have had 103 applicants in and 30 have participated in the program. The average time in jail was six days a month and in the State Psychiatric Hospital one day for each month. After one year in the program the average jail days were then two days per month, reduction of 68.4% and .15% hospital days per month, reduction of 84% hospitalization for a total of $81,000.

Judge John Mitchell, 1st District Court, Kootenai County
The Mental Health Program in Kootenai County started in mid-September. In May, five of us from Kootenai County went down to look at what Judge Moss was doing in Bonneville County. We started our program a few months later with five people and four months after that we had 14. The one thing that comes together is the mental health and substance abuse treatment with forced compliance by the judge, court and mental health drug court team. We have group treatment sessions at least three times a week. The new group will be in treatment four times a week. Once a week starting at 8:00 a.m. on Thursdays they are in front of me and the rest of the Drug Court team for a little over an hour. The only way we can take people right now is if they are Medicaid eligible and that is not the case in Bonneville County, because they have state employees that are providing the ACT Team care. They can bill medicaid for those that are medicaid eligible, but they can also take people that are not on medicaid and bring them into this program. If there ever is funding from the state level, county level or through grants that could really help us reach out and touch the people that are not on Medicaid. The main beneficiary of that would be the counties. The 14 people we have, none spent a day at the Kootenai County site.

Senator Compton - Opened the floor for questions.

Senator McGee - Judge Moss and Judge Mitchell you should be commended for taking on this task. How do we encourage other districts to take on this challenge?

Judge Mitchell - Talk with judges that are interested, have probation and parole talk amongst themselves, Health & Welfare, NAMI the National Alliance of the Mentally Ill having their chapters in the communities. I am in conversation with a NAMI representative in Lewiston to get a similar program started in Nez Perce County.

Judge Moss - As we visit with the judges I think the interest is there. They are committed because they are seeing these people and are dealing with them throughout the state.

Senator McGee - Are you aware of any efforts going on in Canyon County to initiate such a program?

Senator Mitchell - I am not aware in Canyon County. Judge McLaughlin, is your neighbor and I know he plans to start one in July of this year.

Patti Tobias - The statewide court systems number one priority this year is to work with the legislature and try to put together measures and legislature in funding packages that would support further development. We have in each of our Districts the enthusiasm and willingness to expand the capacity of Drug Courts. See evaluation Attachment #1.

Senator Coiner - $81,000 is that per year, per patient

Judge Moss - The $81,000 figure was the savings over the people that were in Drug Mental Health Court at that time versus the prior period of time, it was for all those people, but it has increased. The jail days have gone down to less than one per month and the hospitalization is down to once a year.

Senator Coiner - Is this the savings by the program?

Senator Moss - That is the savings by the program as we have been able to measure it. Eric Olsen was supposed to have a report to me by Friday, but I was in a trial and he could not reach me.

Senator Broadsword - Judge Mitchell could you tell me if you are seeing any patients out of Shoshone, Benewah, Bonner Counties or just Kootenai County?

Judge Mitchell - There is one lady that has moved from Bonner County to Kootenai County just so that she could take advantage of this program. The judge from Shoshone County has four participants in the program, but I think all four were Kootenai County defendants.

Senator Werk - You are volunteering your time, the people who work in the courts are donating their time as well. The dollars that you are using currently, where are you getting them? The other questions is, if we were to look at some kind of funding mechanism do you have any suggestions? Also, how much money do you think might be needed?

Patti Tobias - In terms of resources that are necessary to put together a Mental Health Court, you are right, we are able to get some of them started by pooling the pre-existing resources that are there. We often use some of the substance abuse treatment money for Drug Court, whether you are in Drug Court or Mental Health Court, you have a substance abuse problem. Judge Mitchell has the Drug Court Coordinator wearing two hats. Serving as Drug Court Coordinator and the other hours of the day she is the Mental Health Coordinator to try and get them started. The court clerks are serving in whatever capacity they can serve. Judge Moss is able to do the beginning of the Mental Health Court by only accepting Medicaid eligible defendants, so his funding, additional resources in the Mental Health area is because he is able to work out an agreement with the private Mental Health providers that are going to get Medicaid reimbursement. The Department of Corrections in both of their areas have probation and parole officers dedicating supervision to this specialized case load. For example, Judge Mitchell has the probation officer not only handle Judge Mitchell's case load, but handle the specialized case load of other probationers from other judges, but only those with a mental illness diagnosis.

Senator Compton - How much money do you need?

Patti Tobias - The Supreme Court really feels would be inappropriate for the courts to designate or suggest that those funding sources that policy is circumventing is what legislation should make. What I have heard from legislators as potential sources, would be to look at the alcohol assessment, increase fine money or look at a beer and wine tax system.

Senator Darrington - I am struck by thought with Drug Courts and what human folks are doing, because the district judges and Supreme Court can't just go out and say to a judge will you do a Drug Court or a Mental Health Court. Judges are just like legislators, who have your interest and you have the things you like to do and you feel you're good at and those that you're not. I think they are in Drug Courts in your case and others have followed court. I think it has to be on that basis, not on a basis of an administrative judge saying you're the one that has to do it. This legislation is starting to get a feel for the best way to divert people out of our prison system. It is the front end programs where we give them a chance. It is beyond the legislation, it needs to get into JFAC who recommends budgets. Where we start to pour some resources into what we have been talking about for years, how to keep people out of the prisons. Your time is well spent and your time in judicial conferences is well spent.

Senator Compton - Senator Darrington is right. You can't insist on hashing, dedication or the things that both of you have demonstrated, as well as, other judges and staff around who have been involved in the Drug Court and really got that off the ground. It seems, if there was additional funds available and then had somebody with the compassion interest and concern to reach them. John is there an ACT Team in Kootenai County?

Judge Mitchell - We do have staff in the Kootenai County Mental Health Center, who are trained in the ACT Team. They were not able to help out the court because of the caseloads that we have in the Kootenai County.

Senator Compton - I sat the last four days through Health and Welfare presentations and one of the things that was talked about were the ACT Teams and some of the things they are doing is exactly what you describe. Following up on the defendants in the program to make good citizens out of these people. If you have an ACT Team there, why aren't they helping these guys in court?

Judge Moss - The reason that we didn't shift resources was the level of demand we have within our ACT Team and the eligible clients serving in the system. Those are individuals who have no financial resources, they are not eligible for medicaid. For us to literally abandon those individuals to provide services to the courts is really giving a disservice to a group of people who couldn't access services any other way.

Senator Compton - This seems to be what I heard in Health & Welfare meeting that the ACT Team is a great resource for you. In the Health & Welfare's budget there is a request for two new ACT positions. I think it would behoove all of us critics to make sure this happens.

Judge Moss - One of the primary reasons we requested the ACT Team, particularly rural ACT Teams in our budget this year was to be able to work more closely with work centers in our community. Without the eight hundred thousand or so we are asking, we cannot expand full ACT Teams services in other areas of the state.

Senator Compton - You had 131 applicants.

Judge Moss - We had 131 applications, all of those applicants are not qualified. Some of them are simply criminal thinkers, that are thinking if we can get into this program it will save us from prison. You have to assess them to make sure they are qualified to come into the program or we're wasting the money to try and serve them.

Senator Compton - Could you handle more applicants at the point?

Judge Moss - At this point we were down to 16 (have had 23), because we lost one of our ACT team members. That limited the number we could take. We have hired a replacement and we are starting to see an increase again.

Senator Coiner - Is there any cross referencing between the people your ACT teams are working for, are they stable, not rotating in and out of the courts?

Patti Tobias - We track clients we serve internally. Our data indicates very similar response in terms of production in utilization hospital contact with the criminal justice system. The dimension that is very different with the drug courts versus the ACT Team. The judges talk about the program being voluntary and it is voluntary for all practical purposes, but they can have an involuntary sanction to kind of encourage people to participate in the way that we and the state run the health system. Our clients truly are volunteers. The relationship between the criminal justice system and the ACT Team is a marriage that is truly unique and one that takes advantages of the opportunities that both systems have. We need some seed money. I know Senator Darrington and Senator Keough and other folks here would help carry a bill for that.

DIVISION OF FAMILY AND COMMUNITY SERVICES (FACS)

16-0601-0401 **Family and Community Services - Foster Parent Reimbursement - Presented by Chuck Halligan**

I am here today to present Rules Governing Family and Children's Services. There are two dockets under Tab 20. The first docket I will be discussing is 16-0601-0401, a pending rule that raises the reimbursement rate for foster parents. This rule is the first text tab under tab 20. I would ask that the committee consider adopting these pending rules as final. (See Attachment #2 for complete testimony)

MOTION: A motion was made by **Senator Werk** to approve Docket No. 16-0601-0401. The motion was seconded by **Senator Keough**, and the motion

was **carried by a voice vote**.

16-0601-0402 **Family and Children's Services - Foster Parent - Federal Support - Presented by Chuck Halligan**

The second text tab is docket number 16-0601-0402, a pending rule. I would ask that the committee consider adopting these pending rules as final. These rules address the need to bring our rules in lien with federal funding requirements for our foster care program. This docket had no hearings and the Board of Health & Welfare did comment on the rules asking for a definition of deprivation. (See Attachment #3 for complete testimony)

MOTION: A motion was made by **Senator McGee** to approve Docket No. 16-0601-0402. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

16-0901-0401 **Day Care Center Health Standards - Update of Daycare Health & Safety Standards - Presented by Richard Horne**

Deals with Daycare Health standards. I come before this committee asking for these rules to be killed in their entirety. They are redundant and are already addressed in Idaho Code.

MOTION: A motion was made by **Senator Brandt** to approve Docket No. 16-0901-0401. The motion was seconded by **Senator Coiner**, and the motion was **carried by a voice vote**.

16-0404-0401 **Rules and Minimum Standards for Employment Services - Repeal of DD Employment Rules - Transferred to Voc Rehab - Presented by Cameron Gilliland**

This docket deals with the appeal of the rules governing minimum standards for the employment services. During the legislative session the administration for employment services for individuals with disabilities or mental health issues was moved to the Division of Vocational Rehabilitation. With Employment Services no longer being under the scope of the Department of Health & Welfare, these department rules are now obsolete. They are rules combined with legislative intent and we don't have the program to provide clarity and non-responsibility for the administration of Employment Services, we are asking that these rules be repealed. (Attachment #4)

MOTION: A motion was made by **Senator Coiner** to approve Docket No. 16-0404-0401. The motion was seconded by **Senator Brandt**, and the motion **was carried by a voice vote**.

16-0411-0402 **Developmental Disabilities Agencies (DDAs) Infant-Toddler Provider Training Requirements - Presented by Mary Jones**

The Idaho Infant Toddler Program is the lead agency responsible for the early intervention needs of infants and toddlers. There needs are met by fully qualified personnel through practices to support the interests of the family in responding to their infants needs.

These rule changes better assure that infants and toddlers will receive quality services as promised by federal and state statues when they are served by private developmental disability agencies. (See Attachment #5 for complete testimony.)

MOTION: The motion was made by **Senator Keough** to approve Docket No. 16-0411-0402. The motion was seconded by **Senator McGee**, and the motion was **carried by voice vote**.

16-0606-0401 **Loans to Group Homes for Recovering Alcohol and Drug Abusers - Repeal of Substance Abuse Group Home Loan Program - Presented by Pharis Stanger**

The docket is concerning the rules on loans to group homes for recovering alcohol and drug abusers. These rules are no longer necessary making it possible to repeal this entire chapter. (See Attachment #6 for complete testimony)

MOTION: The motion was made by **Senator Keough** to approve Docket No. 16-0606-0401. The motion was seconded by **Senator Coiner**, and the motion was **carried by voice vote**.

ADJOURN: The meeting was adjourned at 4:17 p.m.

Representative Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 24, 2005

TIME: 3:06 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED:

GUESTS: See attached sign-in sheet

The rules review meeting was conducted by Vice Chair Broadsword.

DIVISION OF MEDICAID - RULES REVIEW

16-0310-0402 **Medicaid Provider Reimbursement - Clarification of Covered Services in Nursing Homes** - Continued Presentation from Committee Meeting, Thursday, January 19) - A pending rule was presented by **Sheila Pugatch**, Senior Financial Specialist in the Division of Medicaid.

She explains that the Department and the Nursing Facility Prospective Payment Oversight Committee worked together to make changes to these rules to make them more understandable to both the Department and to the providers.

The rule changes clarify what types of expenditures Medicaid pays for in a nursing facility. They also clarify the way rates are set for Medicaid reimbursement for individuals in a nursing facility who need additional special care.

Ms. Pugatch gives a brief history of the current prospective payment system which has been in place for approximately five years when it replaced a retrospective reimbursement system that resulted in inaccurate and untimely payments. The current prospective payment system provides a fair reimbursement that is current. The reimbursement is a daily rate and is based on a case mix reimbursement system which adjusts to the needs of the participant. The daily rate is based on historical cost and inflated forward to today's daily rate in order to more closely reflect today's cost to care for the participant. The daily rate is adjusted quarterly based on the case mix of the individuals in the NF. The department and the nursing home industry agree that this system significantly improves the ability to accurately project costs and streamlines administrative processing.

Ms. Pugatch gives highlights of the changes as follows:

- Removes outdated text referring to the retrospective system (sec. 208 and 407 -Nurse Aide Training & Competency Evaluation Programs)

- Incorporates existing rule text in section 208 into the appropriate category of allowed and non-allowed cost (sections 110 and 115 respectively)
- Clarifies how the reimbursement rate is calculated for both the general nursing home population and the special care population

In conclusion, since the prospective payment system went into affect, nursing home rates have stayed in check with the upper payment limit of no more than 2% above the annual inflation rate. The growth in the number of individuals eligible for Medicaid who reside in NFs has remained fairly flat in the past few years with more elderly Medicaid recipients choosing to live in their own homes and communities under one of the department's home and community-based waiver programs.

A letter was received from the **Idaho Health Care Association** supporting these changes (see Attachment #1).

MOTION: A motion was made by **Senator Keough** to approve Docket No. 16-0310-0402. The motion was seconded by **Senator Darrington**, and the motion was **carried by a voice vote.**

16–0309-0405 **The Medical Assistance Program - Ambulance Reimbursement - Alignment with Medicare** (Pending) was presented by **Paul Leary**, Bureau Chief in the Division of Medicaid. This rule proposes changes to reimbursement for ground and air ambulance services. It more closely aligns Medicaid reimbursement with that of Medicare. As a result, Medicaid reimbursement will increase for non-hospital ambulance services and will decrease for hospital ambulance services.

Mr. Leary explains that the Department wants to pay the right price for the right service and where ever possible assure that we are consistent in our reimbursement of providers providing the same service. The proposed amendment creates consistent reimbursement methodology and rates for all providers of ground and air ambulance services. These changes will align Medicaid's ambulance reimbursement methodology more closely with Medicare's methodology that is in the last year of transition to a single fee schedule for all providers. The change provides a more equitable reimbursement structure for all providers and a consistent and predictable methodology that Medicaid can take into the future.

A public hearing was held on this docket but no one attended. Two comments were received; one from a hospital based provider addressing their concerns, and one from the Department seeking clarification.

Stanley Rose, Program Director of Saint Alphonsus Life Flight also gave testimony and is opposed to this rule.

4. Life Flight is a healthcare integrator. We take services to those in need and reduce overall healthcare costs by providing a gateway to technical levels of care.
5. We respond to calls for help. Local resources who are overwhelmed by the nature of the patient or the volume of patients.
6. We believe that this Bill should have used the Negotiated Rule-

making process although the Bill states that this is not necessary, due to alignment with Medicare, there are significant differences from Medicare and these should be discussed with all providers.

7. We can't calculate the effect of the Bill because the "pricing file" is not included in the Bill.

Senator Darrington was handed a paper showing 2003 Hospital Base Ambulance Reimbursement Analysis - Provider Summary and also a sheet showing Non-Hospital Provider Summary. He commented that there were some real winners and real losers according to this analysis. (See Attachment #2)

Mike Brassey of St. Luke's also has concern of this regulation. **Senator Werk** asked **Mr. Brassey** $480,000 were taken away from you tomorrow would this impact St. Luke's budget or your ability to provide this service to the community. **Mr. Brassey** replied that it would. St. Luke's, because it has a children's hospital spends about a million dollars on training per year for training of the neo-natal care. It is a significant part of the budget because the children's hospital is a significant part of the operation.

MOTION: **Senator Compton** moved that this issue be postponed for a couple of days. **Senator McGee** seconded the motion. **Senator Broadsword** asked Mr. Leary if that would give he and Mr. Brassey and Mr. Rose enough time to come to some agreement and return on Wednesday. The motion was **carried by a voice vote**.

16-0310-0401 **Medicaid Provider Reimbursement - Audit Rules - Adding Needed Rules for Contracted Auditors** (Pending) - was presented by **Angela Simon**, Senior Financial Specialist at the Division of Medicaid. These rule changes are needed to add language from the "audit of Providers" chapter of rules that is being repealed. The language in these rules support the audits of institutional providers financial records by Medicaid's contracted auditors which are used to set rates for reimbursement by Medicaid. Terminology has been added into this chapter to help make these rules easier to understand.

16-0502-0301 **Audits of Providers** (Pending) - also presented by **Angela Simon**, Senior Financial specialist at the Division of Medicaid. These rules were written to cover the Department's audits of institutional providers like nursing homes and hospitals. These audits, are now done by outside contractors, so the rules no longer have meaning and are being repealed. Portions of these rules directed at the needs of our audit contractors are addressed in another docket. Failure to repeal these rules would create a conflict with existing audit rules in another chapter.

MOTION: A motion was made by **Senator McGee** to approve **Docket No. 16-0301-0401 and Docket No. 16-0502-0301**. The motion was seconded by **Senator Darrington**, and the motion was **carried by a voice vote**.

16-0309-0501 **Medical Assistance - Investigational/Experimental Medical Procedures** (Temporary) - presented by **David Rogers**, Administrator of the Division of Medicaid.

These rules are being amended to allow Medicaid coverage of

investigational/experimental procedures under certain circumstances. During the past year, the Department considered several cases in which Medicaid participants faced death or significant loss of health if they did not have a procedure that was considered investigational or experimental.

The new section of rules includes a medical review process to help identify when a participant may benefit from an investigational or experimental procedure and determine if Medicaid coverage is appropriate.

If these rules are not approved, Medicaid will be forced to make critical health decisions without the authority in rule to approve coverage of investigational/experimental medical procedures.

Mr. Rogers explained that this rule would be retroactive to March 2004 which would impact the annual budget $550,750. This amount is included in current budget forecast for SFY 2004. This rule is in response to several very difficult cases over the past year. The problem being that there is no clear definition of "investigational" or "experimental" treatment.

Senator Werk would submit that timeliness was a concern. Mr. Rogers agreed. **Senator McGee** clarifies that this process is basically for someone that is in desperate need of some sort, i.e., a transplant and you would go through a specific process to determine whether or not that experimental surgery can be covered. Mr Rogers confirmed. **Senator Compton** asks if this was an optional program to cover transplants. Mr. Rogers confirmed that these were optional. **Senator Compton** wondered what our neighboring states do in these cases. Some states do not cover transplants at all. Most states have some coverage under transplants. **Senator Compton** asks what do we spend a year on transplants? Mr. Rogers replied that with all categories of transplants going back to January of 2004 - about $900,000 in Category 1, 1 ½ million dollars in Category 2, about $500,000 in Category 3 - that would be about 2.9 million dollars.

MOTION: A motion was made by **Senator McGee** to approve Docket No. 16-0309-0501. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote. Senator Keough** votes no because of the complex issue and she has not had enough information to come to a reasonable and responsible vote and wishes it to be so noted.

16-0309-0502 **Medical Assistance - Additional Level of Care of Personal Care Services** (Temporary**)** - presented by **Leslie Clement**, Acting Deputy Administrator with the Medicaid Division. Approximately two years ago individuals receiving cash assistance through the Division of Welfare were converted to Medicaid with their existing assessed level of care. However, when individuals were re-assessed using the Department's Uniform Assessment Instrument, their level of care was generally assessed at a lower level than when they entered the program. After analysis, it was discovered that the UAI did not sufficiently score individuals who had behavioral issues because it was designed primarily to assess physical functional capabilities. This proposed rule change will create a unique identifier in the UAI that will identify persons living in Certified Family Homes and Assisted Living Facilities with specific

diagnosis of mental illness, mental retardation and/or Alzheimer's Disease at a unique level of care that reflects behavioral needs and ties to an established reimbursement rate. This rule change adds an additional level of care which reflects minimum resources needed for providing services to individuals with specific behavioral needs of 12.5 hours per week of personal care services based on documented diagnosis of mental illness, mental retardation, or Alzheimer's Disease. The dollar amounts used as maximum calculated fees were deleted because they are outdated and not used at this time. The calculations now use a uniform term for the calculated fee.

Ms. Clement explains that these temporary rules will allow the department to fund the right care at the right time and help meet the original objectives of SCR 110. The legislature will have another opportunity to review this docket as a Pending rule next year and review the resulting impacts.

Mr. Scott Burbee, CEO of Valley Vista Care Services of St. Marie's, Idaho and **Michelle Glasglow,** Executive Director of the Idaho Assisted Living Association both support this docket.

MOTION: A motion was made by **Senator Coiner** to approve Docket No. 16-0309-0502. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote.**

DIVISION OF FAMILY AND COMMUNITY SERVICES (FACS)

16-0614-0401 **Prevention of Minors' Access to Tobacco Products - Tobacco Inspections - Use of Minors Exemption** - presented by **Terry Pappin**, Program Specialist in the Division of Family and Community Services, Department of Health & Welfare. Through Education, permits and inspections the Idaho Tobacco Project protects Idaho adolescents by reducing the sale of tobacco products to youths under the age of eighteen.

This rule exempts businesses that only serve adults from inspections using a minor. The rules also allow the Department to issue permits to businesses selling tobacco products through the Internet, or through telephone or fax orders. Along with this, the rules support a law passed last session that requires those who deliver tobacco products to be issued permits.

This rule making implements requirements from Idaho Code that were passed in Senate Bill No. 1067 and House Bill No. 357 during the 2003 Legislative session.

There was a negotiated rule making involving many interested parties. Those included were shipping entities, law enforcement agencies, and retailer associations. The Idaho Office of the Attorney General was also involved. The only verbal comments received according to **Ms. Pappin** were from United Parcel Service, indicating that they would no longer deliver tobacco products to Idaho. **Ms. Pappin** would like to see these pending rules adopted to provide the Department clear authority to enforce tobacco inspections and collect fines from retailers who sell

tobacco to our youth.

MOTION: A motion was made by **Senator Werk** to approve Docket No. 16-0614-0401. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote.**

ADJOURN: The meeting was adjourned at 4:37 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, January 25, 2005

TIME: 3:07 a.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED:

GUESTS: See attached sign-in lists

The rules review meeting was conducted by Vice Chair Broadsword.

BUREAU OF OCCUPATIONAL LICENSES - RULES REVIEW

24-1701-1401 **Rules of the Idaho Board of Acupuncture** (Pending) - Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. The requested changes to this rule are as follows:
page 185 - Change web address from www2.state.id.us/ibol/acu to **http://www.ibol.idaho.gov/acu.htm.,**
page 186 - 305.Continuing Education
- Add 05. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board.
Page 186 - 575. Discipline
- Add 01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars ($1,000) upon a licensee for each violation of Section 54-4711, Idaho Code.
- Add 02. Costs and Fees. The Board may order a licensee to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-4711, Idaho Code.

MOTION: A motion was made by **Senator Darrington** to approve Docket #24-1701-1401. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

24-1501-0401 **Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists** (Pending) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. This rule again updates the web address, corrects obsolete language, clarifies the examination that is required, deletes reference to pastoral counselors per Idaho code, and adds a special exemption to the rules requiring continuing education for reasons of individual hardship. This exemption is granted at the sole discretion of the Board.

MOTION: A motion was made by **Senator Coiner** to approve Docket #24-1501-

0401. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

24-0901-0401 **Rules of the Board of Examiners of Nursing Home Administrators** (Pending) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. Changes are again made to the web address, clarification of language and additional sections as follows:

050. Applications

01. Board Consideration. No application will be considered for any action unless accompanied by the appropriate fees and until the required supporting documentation is received by the Bureau.

02. Filing Deadline. To be considered by the Board, properly completed applications must be received by the Bureau at least thirty (30) days prior to the first day of the month in which the Board will meet.

03. Lack of Activity. Applications on file with the Board that lack activity for any period of twelve (12) months shall be terminated unless good cause is demonstrated to the Board.

300. Endorsement

Each applicant for licensure by endorsement shall be required to document compliance with each of the following requirements.

01. A Valid License. Hold a valid and current nursing home administrator license issued in another state.

02. Experience. Two (2) years of practice as a licensed nursing home administrator in another state.

03. Criminal History. Has not been found guilty or convicted or received a withheld judgment or suspended sentence for any felony or any crime involving moral turpitude or received discip0line for a license offense in any state.

04. National Examination. Has taken and successfully passed the NAB examination.

05. State Examination. Has taken and successfully completed the state of Idaho examination.

06. Affidavit. Has certified under oath to abide by the laws and rules governing the practice of nursing home administration in Idaho.

Under 400. Nursing Home Administrators-In-Training, the following addition:

03.

g. Completion of a specialized course of study in nursing home long-term health care administration approved by NAM or otherwise approved by the Board.

MOTION: A motion was made by **Senator Keough** to approve Docket #24-0901-0401. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

24-1901-0401 **Rules of the Board of Examiners of Residential Care Facility Administrators** (Pending) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. Correction to the web address and changes to page 189 were made as follows.

150. Qualifications for Administrator License

Each applicant for an administrator's license and each licensed administrator, as requested by the Board, shall submit proof, along with

their application, that said individual meets the following qualifications for the issuance of a license or permit, or the retention or renewal of a license.

01. Good Moral Character. The applicant shall submit a criminal background check by an entity approved by the board establishing that the applicant has not been convicted, pled guilty or nolo contendere or received a withheld judgment for a felony or any crime involving dishonesty or the health, safety or welfare of a person.

02. Suitability. The applicant shall submit a statement by a licensed physician establishing that the applicant has sufficient physical, emotional and mental capacity to carry out and comply with the laws and rules governing residential care facility administrators.

MOTION: A motion was made by **Senator McGee** to approve Docket #24-1901-0401. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

24-1401-0401 **Rules Governing the Board of Social Work Examiners** (Pending) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. Roger Hales, Attorney, representing the Bureau of Occupational Licenses points out the following changes beginning on page 173:

201. - Page 173

04. Clinical Practice Exemption - extending the exemption period for a year to July 1, 2006.

08. Inserted language that was left out. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. "Actual supervisor contact shall be face-to-face....and must occur on a regular and on-going basis"

c. Supervision of social workers pursuing licensure as clinical level practitioners must be provided by either a ..... or a licensed clinical professional counselor registered as a supervisor or a licensed marriage and family therapist registered as a supervisor ... No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. A social worker pursuing licensure at the clinical level must document one thousand seven hundred fifty (1,750) hours of direct client contact of the required three thousand (3,000) hours in clinical social work as defined.

202. Social Work Supervisor Registration

Effective January 1, 2006, Idaho licensed social workers shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a clinical social worker.

01. Requirements for Registration.

a. Document at least 2 years experience as a licensed clinical social worker in Idaho.

b. Document at least 2,000 hours of direct client contact as a clinical social worker within the last 3 years.

c. Document 15 contact hours of education in supervisor training as approved by the board.

d. Have not been the subject of any disciplinary action for 5 years prior to application for registration.

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the board.

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor.

b. A supervisor's registration shall be valid only so long as the individual's clinical social worker license remains current and in good standing.

c. A registered clinical social worker supervisor shall not provide supervision to more than 3 individuals at one time.

Audio tapes and internet based courses are added to 02. Categories of Continuing Education.

Senator Compton posed a question regarding c. "supervising no more than 3 individuals." The meeting was then turned over to **Robert Payne**, a Licensed Clinical Social Worker and Chairman of the Board. Mr. Payne explained that this was not to be confused with administrative supervision; however, 3 might not be the right number. The rules do not go into effect until July 1, 2006 so this might be amended in the future with further study.

Senator McGee agrees with **Senator Werk's** comment to table this and get a summary later from Ms. Jacobsen.

Senator Broadsword says first let's hear from **Daniel Harkness**, Professer of Boise State University, Licensed Clinical Social Worker who opposes this rule. He explains that he opposes (1) 202.01.b requiring documentation of "at least two thousand (2000) hours of direct client contact as a clinical social worker within the three (3) years," (2) 202.01.c, requiring documentation of "fifteen (15) contact hours of education in supervisor training as approved by the board," and (3) 202.02.c. which states that "A registered clinical social work supervisor shall not provide supervision to more than three (3) individuals at one (1) time." (See Attachment #1.)

Ms. Jacobsen stated that 202.01.b, 202.01.c, and 202.02.c were rejected in the House.

MOTION: A motion was made by **Senator Coiner** to approve Docket #24-1401-0401 with the exception of 202.01.b, 202.01.c, and 202.02.c. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

24-1601-0401 **Rules of the State Board of Denturitry** (Pending Fee Rule) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. This rule would raise the annual renewal fees from $300 to $450 and also correct the web address.

MOTION: A motion was made by **Senator Compton** to approve Docket #24-1601-0401. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote** with a comment from **Senator Darrington** to remind the committee of conflicts in the past on this issue (1986).

24-0601-0401 **Rules of the Board of Hearing Aid Dealers and Fitters** (Pending Fee Rule) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. Another small segment of our population, only 132 hearing aid dealers and fitters - they would like to raise the annual renewal fee from $150 to $250. Also they would like to correct the web page address, change the content of exam, and make changes to the reexamination section.

MOTION: A motion was made by **Senator McGee** to approve Docket #24-0601-0401. The motion was seconded by **Senator Coiner**, and the motion was **carried by a voice vote**.

24-1201-0401 **Rules Governing the Board of Psychologist Examiners** (Pending Fee Rule) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. She explains an increase of $25 for the annual renewal fee, update the web address, and delete the section for Psychology Intern.

MOTION: A motion was made by **Senator Coiner** to approve Docket #24-1201-0401. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

24-0501-0401 **Rules of the Board of Drinking Water and Wastewater Professionals** (Pending Fee Rule) Presented by **Rayola Jacobsen**, Bureau Chief, Bureau of Occupational Licenses. A fee stabilization of $60. **Don Munkers**, Executive Director of Idaho Water Association made comments on these rules that came over from DEQ. He stated that he had some concerns, but would agree to live with the current rules if they can come back next year. **Senator Compton** wondered what would happen in the rural areas where qualifications for a certain level may be limited. **Senator Brandt** explained that requirements are brought to us by the federal government. The Clean Water Act mandates the requirements.

MOTION: A motion was made by **Senator Coiner** to approve Docket #24-0501-0401. The motion was seconded by **Senator Brandt**, and the motion was **carried by a voice vote**.

ADJOURN: The Committee adjourned at 4:18 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, January 26, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED:

CONVENED: **Chairman Compton** called the meeting to order at 3:05 p.m.

GUESTS: See attached sign-in list

Kelly Buckland, Executive Director, State Independent Living Council - Medicaid Buy-In. Mr Buckland presented a history of the Medicaid Buy-In program to the Committee. (See Attachment #1) In the 2004 State of the State address, the Governor recommended that the program be adopted. In March , 2004, the Legislature passed S1445 with the intent that the Department of Health and Welfare begin the Medicaid Buy-In Program in fiscal year 2005 with existing financial resources. Implementation should be based on budget neutrality.

Senator Compton asked if he anticipated having a legislation to review with our Committee to see if we could pass on it. **Mr. Buckand** then passed out a handout of questions and answers on the program (see Attachment #2).

Mr. Buckland's council voted to pursue this legislation. He stated that his council felt that after10 years of trying to deal with recommendations and working with different organizations that at this point they would just try to introduce what they had. He then introduced a letter from Bobby Ball, Executive Director of Americans with Disabilities Act Task Force (see Attachment #3) to point out the need for this program, which allows a person with a disability to live and work and not lose eligibility from Medicaid.

Senator Compton commented that he had worked on this Committee back in 1996 and heard many interesting stories. Many people were stuck in a tough spot because they were making $1 more than the limit. We did make recommendations to the Governor with the intent to pursue that and yet we have still been thinking about it for about 10 years. We would like to see your legislation, and I offer you to come back although I can't guarantee you the will of the Committee or the Legislature. Just to give us a preview, how revenue neutral is it? **Mr. Buckland** replied that the last fiscal impact statement from the department was about $480,000.

Senator Keough asked how many people that amount would serve and **Mr. Buckland** was not sure of the number. He explained that the reason

there is a fiscal impact is that if the state chooses to implement the program under the 1999 legislation there would be flexibility in how eligibility guidelines were developed into the program. There have been 26 states that have adopted this program. Washington, Oregon, and Alaska report that about 90% were already on Medicaid, 10% were new.

Senator McGee said he would be interested in seeing some of those statistics from other states and how that program has worked.

Senator Broadsword asked **Mr. Rogers** (in the audience) if he included a buy-in program in his budget presentation to the committee. **Mr. Rogers** said he had included the infrastructure, not the benefits.

Senator Compton asked if the federal grant money had been spent? **Mr. Rogers** said it had not. Some of the money was used for system changes. All was 100% federal money.

DIVISION OF MEDICAID

16-0309-0405 **The Medical Assistance Program - Ambulance Reimbursement - Alignment with Medicare** (Pending) (Continued Presentation from Committee Meeting, Monday January 24) - Presented by **David Rogers**, Administrator for the Division of Medicaid. He explained that they were sent away to see if they could work on some challenges in terms of the potential negative impact of our proposed changes to the reimbursement methodology in the specific fee schedule related to ambulance services. He said they were not able to reach any consensus on what that fee schedule should be within the two days that we had available. He was prepared to make some additional remarks if that would be helpful to the committee.

He provided a quick review of where they were on Monday. Currently there are two separate reimbursement approaches for EMS providers. Hospital based ambulance services are reimbursed through a cost-based reimbursement process; non-hospital based providers, including many county EMS providers, are currently paid on a fee schedule. This docket revises Medicaid provider reimbursement rules to specify that all ambulance providers will be paid on a fee schedule. The docket does not specify the specific fee schedule to be used. In response to **Senator Keough's** question the other day, typically there is no fee schedule detailed in rule. We may want to take that up sometime in the future. Subject to the approval of this rule, Medicaid was proposing to implement a single fee schedule based on 2002 medicare rates and, as was discussed on Monday, were not planning to follow exactly Medicare's methodology; for example, the rule modifier would not be included. They were, however, planning to level the playing field, that is to employ the same fee schedule for both hospital and non-hospital providers.

Two issues in terms of the history of this docket; first relates to how the hospital providers are paid. Ambulance services are reviewed and payment is authorized at the level of payment for the appropriate level of transport that is medically necessary. Earlier this year when Medicaid took that responsibility over, they (actually it was being done by the Division of Health through an inter-agency agreement) took it back and

discovered that claims were paid to hospital providers (based on their cost reimbursement process) that were above what was authorized at the needed level of transport. The second issue was the level of payment to non-hospital providers and assessment was that there was some real inequities in the payment rate between hospital and non-hospital providers. This was enlarged due to those medicare changes referred to. Regarding the public comment, these rules are published again with the Administrative Procedure Act. This process requires an opportunity for interested individuals and affected parties to comment on the rules. As noted on Monday, comments were received from one of the two hospital-based providers. A public hearing was also held here in Boise even though it was not required under the Administrative Procedure Act. This was done with the understanding that there were people on both sides of this issue. **Mr. Rogers** stated that Mr. Leary, had stated on Monday that no one showed up, but that was not actually correct. There were no providers that showed up at the hearing. Medicaid met with the hospital association, provided feedback, got a little bit of speculation, which is probably the reason Senator Darrington had specific costs information available to him.

In conclusion, there was not enough dialogue on this situation. It is recognized that these are vital services provided by both hospital and non-hospital providers and that air ambulance, specifically, is a critical part of our EMS system. He proposed that the committee approve the pending rules. By this action, the committee would not approve a specific fee schedule. What it would do is move hospital based providers from a cost reimbursement methodology to a fee schedule. Medicaid would then implement a fee schedule that is budget neutral to providers. This should not hurt the hospital providers, particularly the air ambulance provider, but obviously it wouldn't help the non-hospital providers. This would allow us to move away from the cost reimbursement, which is one of the reasons that this rule making was initiated to begin with, but spend more time trying to reach an equitable, yet appropriate fee schedule that could level the playing field, but again, certainly minimize any impact to air ambulance services. If no consensus could be reached in this process, in all likelihood we would back next year with specific modifications in the rules that detailed out that methodology.

Mr. Rogers reiterated that they were mindful of the impact that this can have on the entire EMS system and want to proceed in a way that ensures that the best thing is being done for the state of Idaho. He recommends that the committee approve the rule under the context that has been described.

Senator Keough asked **Mr. Rogers** if he was asking the committee to take a leap of faith? Since the committee is unable to put conditional limitations on rules how can it be assured that the rule would not end up as it was originally intended. **Mr. Rogers** responded that Senator Keough was correct. It would be somewhat of a trust, his word and then a demonstration through experience. **Senator Keough** mentioned that a County Commissioner in her district and in one of those counties that is in some massive turmoil in terms of delivering emergency medical assistance, specifically transporting emergency medical assistance was quite concerned that this proposed rule would further upset what is

already a mess. **Mr. Rogers** knew that there was some financial stress out in the EMS system and hoped that this rule would help this situation by leveling the playing field. **Senator Keough** stated her approval of going to a fee-based schedule, but with recognition of the air transport services that do cost more and also serve a population where you can't a set of tires and critical life support for rural areas of the state. **Mr. Rogers** replied that the figures that were referred to on Monday did not carve out the air care ambulance services so that is something that should be looked at in terms of readjusting. **Senator Compton** asked if that was the only option. **Mr. Rogers** replied that the rule could be rejected and they would be back again next year. **Senator Compton** stated that initially we were told that we would save $10,000, but as we saw the other day there is a pretty significant impact on some. If the rule is passed, would there be any significant savings to the State in that process. **Mr. Rogers** answered no, that the approach was really designed to balance it so it was neutral.

Senator Broadsword identified **Mr. Brassey**, but would pass it on to **Steve Maillard**, president of the Idaho Hospital Association representing the hospitals. He explained that they had met with Mr. Roger's group and discovered that there are a lot of issues on the table to be resolved, not the least of which is the big dollar amount taken away from a couple of his members. Typically when governmental programs do something that has that dramatic effect, they phase it in and then the equity is achieved. We all agree that there should be a fee schedule, a level playing field - it's how to get there. It was his opinion that if they had gone to negotiated rule-making in the first place, there would only be testimony in favor of the rule. There are some equity issues that should be addressed. He would negotiate with **Mr. Rogers** and committee members at the table and get a rule that works for everybody.

Senator Broadsword asked **Mr. Maillard** if he could work with Mr. Rogers if this rule was accepted as he discussed to come to some equitable agreement over the course of the next year and still make the changes that would help our rural community and not harm your bigger hospitals. **Mr. Maillard** said they would do what needs to be done to get this thing done right, even though his preference would be to start over. If the committee feels that it is better to pass the rule and then start negotiating, we will be at the table to do that.

Senator McGee requests that **Mr. Rogers** briefly reiterate what his concern was about not passing the rule this year. **Mr. Rogers** replied that the main concern was that if they did not have the authority to move hospital providers to the fee schedule, they would not have the resources to make the adjustments to the other providers without requiring that additional dollars be spent.

Senator Coiner said that his understanding was that if the rule was passed, the fee schedule would be discussed and negotiated later. If not passed you would be blocked from doing anything for 12 months. **Mr. Rogers** replied that that was his concern.

Senator Werk asked **Mr. Rogers** is there was some pending emergency having to do with rural EMS providers that is brewing out there that has

the potential to explode in this year of discussion. **Mr. Rogers** replied that they know there is stress out there, but wouldn't characterize it as an impending crisis.

Senator Werk made the comment that process is important. Our citizens would have the ability to comment on things. I get really uncomfortable when I perceive that the process that has gone into creating something has been flawed. My view in this case, is that we have a flawed process, and I have a hard time supporting a rule that was created when the process was flawed.

Senator Broadsword asked what the House had said about this rule, and was told they have not heard it yet.

Senator Compton asked if notice was given about this rule and **Mr. Rogers** said it had. **Mr. Rogers** thought it was not the process that didn't work.

Senator Darrington gave discussion to the committee as to what the options were in approving this rule. (1) Approve the rule, and let the record of the Senate H&W Committee reflect the fact that we have a pledge from the department and the interested entities to go back to the drawing board and work out the details and come back next year with some changes to the rule. (2) We can reject the rule. Go draft a resolution, pass the resolution, hope the House would do the same, then the rule would be rejected.

MOTION: A motion was made by **Senator Brandt** to approve Docket No. 16-0309-0405 with a note that parties involved would work together diligently and inform the committee of their success in a few months of working out the details. The motion was seconded by **Senator Keough**, and the motion was carried by a voice vote.

DEPARTMENT OF ENVIRONMENTAL QUALITY
Tony Hardesty, Director of IDEQ took the podium briefly to introduce herself to the committee and let them know that she would be glad to work with them on any issue.

58-0101-0302 **Rules for the Control of Air Pollution in Idaho** (Pending Rule) (Compliance Certification) - Presented by **Martin Bauer**, Air Administrator for the Idaho Department of Environmental Quality. He explains that this rule requires Title V sources to identify in their compliance certification, whether compliance with each air quality permit term and condition was continuous or intermittent. There were negotiated rulemaking meetings with industries, attorneys, consultants. (See Attachment #4)

MOTION: A motion was made by **Senator Keough** to approve Docket No. 58-0101-0302. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

58-0101-0304 **Rules for the Control of Air Pollution in Idaho** (Pending Rule) (New source Review) - Presented by **Martin Bauer**, Air Administrator for the Idaho Department of Environmental Quality. He explains that the USEPA revised their regulation to make changes to the applicability requirements

for modifications to large industrial sources. Federal Regulations require all permitting authorities to adopt these changes no later than January 2, 2006. This rule fulfills this requirement. (See Attachment #5)

Senator Keough asked about the acronym PSD. **Mr. Bauer** replied that it stood for Prevention of Significant Deterioration. **Senator Keough** also asked about the increase of cost. **Mr. Bauer** explained that it would mean an increase in personnel time.

MOTION: A motion was made by **Senator McGee** to approve Docket No. 58-0101-0304. The motion was seconded by **Senator Compton**, and the motion was **carried by a voice vote**.

58-0101-0401 **Rules for the Control of Air Pollution in Idaho** (Pending Rule) (Permitting Clarification - Exemptions) - Presented by **Martin Bauer**, Air Administrator for the Idaho Department of Environmental Quality. He explains that as part of the DEQ's requirement by the federal government to provide for a pre-construction approval process for non-major sources, DEQ implemented a self exemption process that included a modeling requirement. When EPA approved this program into the State Implementation Plan, EPA indicated that the self exemption modeling criteria was approvable with or without the modeling requirement. At the request of the regulated community, DEQ is proposing to delete the self exemption modeling criteria. This will not have an affect on DEQ's ability to regulate industrial sources that either cause or contribute to a national ambient air quality violation. The DEQ regulations allow for operating permits to be issued in this case. (See Attachment #6)

MOTION: A motion was made by **Senator Brandt** to approve Docket No. 58-0101-0401. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

58-0101-0402 **Rules for the Control of Air Pollution in Idaho** (Pending Rule) (Annual update of federal regulations incorporated by reference) - Presented by **Martin Bauer**, Air Administrator for the Idaho Department of Environmental Quality. He explains that this proposed rule updates citations to the federal regulations incorporated by reference to include those revised as of July 1, 2004. This is a routine annual rule update.(See Attachment #7)

MOTION: A motion was made by **Senator McGee** to approve Docket No. 58-0101-0402. The motion was seconded by **Senator Brandt**, and the motion was **carried by a voice vote**.

58-0105-0401 **Rules and Standards for Hazardous Waste** (Pending Rule) (HWMA permit appeals) - Presented by **Orville Green**, Waste Management and Remediation Division Administrator. He explains that this rule requires the hazardous waste rules to conform to the administrative procedures. Currently the hazardous waste rules require hazardous waste contested fields to follow the code of federal regulations and the EPA's rules. State law requires that they follow the Administrative Procedures Act. These changes will remove the reference to the code of federal regulations and then bring not only hazardous waste but all rules and contested cases that go before the Board of Environmental Quality. (See Attachment #8)

MOTION: A motion was made by **Senator Keough** to approve Docket No. 58-0105-0401. The motion was seconded by **Senator Coiner,** and the motion was **carried by a voice vote**.

58-0105-0402 **Rules and Standards for Hazardous Waste** (Pending Rule) (Annual update for federal regulations incorporated by reference) - Presented by **Orville Green**, Waste Management and Remediation Division Administrator. He explains that this is an annual update. The only change to this rule is to change 2003 to 2004. (See Attachment #9).

MOTION: A motion was made by **Senator Werk** to approve Docket No. 58-0105-0402. The motion was seconded by **Senator Keough**, and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:30 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 27, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED:

CONVENED: **Chairman Compton** called the meeting to order at 3:07 p.m.

GUESTS: See attached sign-in list

DEPARTMENT OF ENVIRONMENTAL QUALITY

58-0102-0402 **Water Quality Standards and Wastewater Treatment Requirements** (Pending Rule) (Repeal of Wastewater system operator certification rule sections) - Presented by **Barry Burnell**, Water Quality Administrator for the Idaho Department of Environmental Quality. **Mr. Burnell** introduced **Nancy Bowser** to further explain the rule. She explained that this rule implements the provisions of the Drinking Water and Wastewater Professionals Licensing Act, Senate Bill 1279, wherein the Legislature transferred authority for the licensure of drinking water and wastewater operators from the Department of Environmental Quality to a Governor appointed Drinking Water and Wastewater Professional Board and the Idaho Bureau of Occupational Licenses. This action would repeal DEQ's authority in the licensing of Wastewater Operators. For complete testimony, see Attachment #1.

MOTION: A motion was made by **Senator Keough** to approve Docket No. 58-0102-0402. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

58-0108-0402 **Idaho Rules for Public Drinking Water Systems** (Pending Rule) (Repeal of drinking water system operator certification rule sections) - Presented by **Barry Burnell** and **Lance Nielsen**, Drinking Water Program Manager. He explained that this is the same action as for Docket 58-0102-0402. It transfers the licensure of drinking water operators to an appointed Drinking Water and Wastewater Professional Board and the Idaho Bureau of Occupational Licenses. This action would repeal DEQ'S authority in the licensing of Public Drinking Water Operators. For complete testimony, see Attachment #2.

MOTION: A motion was made by **Senator Coiner** to approve Docket No. 58-0108-0402. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

58-0108-0401 **Idaho Rules for Public Drinking Water Systems** (Pending Rule)

(Clarification of engineering standards) - Presented by **Barry Burnell** and **Tom John**. This rule clarifies the engineering standards for public drinking water systems. **Mr. John** explained that it clarifies language in the section for disinfecting our public drinking water systems, improves language in sections that have posed interpretive difficulties, and makes minor modifications to language regarding contracting for operator services. For complete testimony, see Attachment #3.

MOTION: A motion was made by **Senator Compton** to approve Docket No. 58-0108-0401. The motion was seconded by **Senator Keough**, and the motion was **carried by a voice vote.**

58-0108-0403 **Idaho Rules for Public Drinking Water Systems** (Pending Rule) (Incorporation of federal arsenic standards) - Presented by **Barry Burnell** and **Jerri Henry**, Drinking Water Chemical Rule Maker of the State Office. Mr. Burnell explained that we must be no more stringent than the federal government. It revises federal arsenic standard for public drinking water systems from 50 parts per billion (ppb) to 10 pbb and clarifies procedures for determining compliance with other chemical standards.

For complete testimony, see Attachment #4. A letter from **Idaho Water Utilities Council** is in support of Docket #58-0108-0403 and is Attachment #5.

There was much discussion among the committee members regarding the necessity of this rule especially for the rural communities.

MOTION: A motion was made by **Senator Coiner** to approve Docket No. 58-0108-0403. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

BOARD OF MEDICINE

22-0104-0401 Rules for the Board of Medicine for Registration of Supervising and Directing Physicians (Pending Rule) - Presented by **Nancy Kerr**, Executive Director of the Board of Medicine. She explained that the pending rules remove all references to the previous requirement for physician supervision of advanced practice nurses.

For complete testimony, see Attachment #6.

MOTION: A motion was made by **Senator McGee** to approve Docket #22-0104-0401. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

BOARD OF DENTISTRY

19-0101-0401 **Rules of the Idaho State Board of Dentistry** (Pending Rule) - Presented by **Mike Sheeley**, Executive Director of the Idaho State Board of Dentistry. He explained that the pending rules provide the following:

- specific requirements for the issuance and renewal of the extended access dental hygiene endorsement;
- specific requirements to entitle a dental hygienist to volunteer in an extended access oral health care program;

- a specific list of permissible and prohibited functions for a dental hygienist practicing under specified levels of supervision in a private dental office or in an extended access oral health care program;
- a specific list of permissible and prohibited functions for a dental assistant practicing under the direct supervision of a dentist;
- and continuing education standards for volunteer dentists and dental hygienists holding an extended access dental hygiene endorsement.

He further stated that the text of the pending rule was amended in accordance with Section 67-5227, Idaho Code, as a result of public comment. In order to keep the temporary rule in place while the pending rule awaits legislative approval, the Board of Dentistry amended the temporary rule with the same revisions which were made to the pending rule. For further explanation, please refer to the State of Idaho Board of Dentistry Memo, Attachment #7.

MOTION: A motion was made by **Senator Keough** to approve Docket #19-0101-0401. The motion was seconded by **Senator Coiner**, and the motion was **carried by a voice vote**.

19-0101-0402 **Rules of the Idaho State Board of Dentistry** (Pending Rule) - Presented by **Mike Sheeley**, Executive Director of the Idaho State Board of Dentistry. He explained that the proposed rule incorporated the American Dental Hygienists' Association's Code of Ethics for Dental Hygienists into the Board of Dentistry's administrative rules by reference;

- specified that a violation of the American Dental Hygienists' Association's Code of Ethics for Dental Hygienists constitutes unprofessional conduct by a dental hygienist that may constitute grounds for disciplinary action
- specifically identified three (3) additional areas of specialy dental practice (oral and maxillofacial radiology, oral and maxillofacial pathology and dental public health) to be recognized and licensed by the Board of Dentistry;
- and included the three additional areas of specialty dental practice to be recognized and licensed by the Board of Dentistry in the specialty advertising standards.

He further stated that there were no textual change between the text of the proposed rule and the text of the pending rule. For further explanation, please refer to the State of Idaho Board of Dentistry Memo, Attachment #8.

MOTION: A motion was made by **Senator Werk** to approve Docket #19-0101-0402. The motion was seconded by **Senator Keough**, and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:13 p.m.

Representative Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, January 31, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator Darrington, excused
CONVENED:	**Chairman Compton** called the meeting to order at 3:03 p.m.
GUESTS:	See attached sign-in list.

RS14411 **Relating to the Children's Trust Fund** - Presented by **Bill Van Tagen**, Deputy Attorney General. This RS proposes to amend Idaho Code 39-6007 concerning the Children's Trust Fund. The trust fund check-off with a $2.5 million cap that is currently in the RS would disappear.

MOTION: A motion was made by **Senator Broadsword** to send to print RS14411. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote.**

RS14458 **Relating to Services to Victims of Cystic Fibrosis** - Presented by **Dick Schultz**, Administrator of Division of Health. He explained the current statutory responsibility was given to the Department in 1975. The $24,000 appropriation to provide services to victims of Cystic Fibrosis has not changed since then. He pointed out that there were two categories that govern the program; one that addresses children up to age 18, and the statute provides services for those that are over 21. He said they were only dealing with the statutory provision which applies to adults. He pointed out the sliding fee scale for reimbursement. He explained the budget shortfall on the Utilization/Budget history (page 5 of Attachment #1) which means general funds are being shifted to pay for these services. For the complete testimony, see Attachment #1.

MOTION: A motion was made by **Senator Keough** to send to print RS14458. The motion was seconded by **Senator Broadsword**, and the motion was **carried by a voice vote**. **Senator Werk** voted no on this motion.

IDAHO COMMISSION ON AGING

15-0101-0401 **Rules Governing Senior Services Program** (Pending Rule) - Presented by **Sarah Scott**, Program Operations Manager for the Idaho Commission on Aging. She explained that these changes remove duplication and

redundant language. The rules have also been reorganized so that they flow more logically.

MOTION: A motion was made by **Senator McGee** to approve Docket No. 15-0101-0401. The motion was seconded by **Senator Keough** and the motion was **carried by a voice vote**.

15-0102-0401 **Rules Governing Area Agency Adult Protection** (Pending Rule) - Presented by **Sarah Scott**, Program Operations Manager for the Idaho Commission on Aging. She explained that the definition of "substantiated" is being clarified to reflect that an Adult Protection investigation is a preliminary investigation to determine whether there is enough evidence to refer the complaint to law enforcement and Health and Welfare for further investigation and disciplinary action.

MOTION: A motion was made by **Senator Coiner** to approve Docket No. 15-0102-0401. The motion was seconded by **Senator Keough** and the motion was **carried by a voice vote**.

BOARD OF NURSING

23-0101-0401 **Rules of the Idaho Board of Nursing** (Pending Rule) - Presented by **Kay Christensen**, Deputy Attorney General for the Board of Nursing. She explained that there were no comments received, either written or verbal, relative to the pending rule. The changes accomplish four objectives:

- Implementation of the provisions of two bills passed by the 2004 Idaho Legislature: HB 659 and HB 694
- Conformity with uniform rules agreed to by members of the Nurse Licensure Compact
- Clarification of the intent of existing rules
- Correction of an error in rule citation in existing rule

For complete testimony, see Attachment #2.

MOTION: A motion was made by **Senator Werk** to approve Docket No. 23-0101-0401. The motion was seconded by **Senator Compton**, and the motion was **carried by a voice vote.**

BOARD OF PHARMACY

27-0101-0401 **Rules of the Idaho State Board of Pharmacy - Notice of Rulemaking** (Pending Rule) - Presented by **Richard Markuson**, Director of the Board of Pharmacy. He explained that this rule changes ratio of the technicians in the pharmacy from 2 to 1, to 3 to 1.

MOTION: A motion was made by **Senator Coiner** to approve Docket No. 27-0101-0401. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote.**

27-0101-0402 **Rules of the Idaho State Board of Pharmacy - Notice of Rulemaking** (Pending Rule) - Presented by **Richard Markuson**, Director of the Board of Pharmacy. He stated that this was a pilot project to use teleconferencing and high-speed internet connections to bring pharmacy expertise to Idaho's rural medical facilities by providing pharmaceutical

coverage 24-7 to those areas.

MOTION: A motion was made by **Senator Coiner** to approve Docket #27-0101-0402. The motion was seconded by **Senator Compton**, and the motion was **carried by a voice vote.**

A substitute motion was made by **Senator Keough** to have this Docket No. #27-0101-0402 return on Wednesday, February 2 so she can research this issue and see if it should be done by statute. The motion was seconded by **Senator Werk**, and motion was **carried by a voice vote**.

27-0101-0403 **Rules of the Idaho State Board of Pharmacy - Notice of Rulemaking** (Pending Rule) - Presented by **Richard Markuson**, Director of the Board of Pharmacy. He explained that this rule is corrected to bring into compliance.

MOTION: A motion was made by **Senator McGee** to Docket No. 27-0101-0403 be approved. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote.**

27-0101-0404 **Rules of the Idaho State Board of Pharmacy - Notice of Rulemaking** (Pending Rule) - Presented by **Richard Markuson**, Director of the Board of Pharmacy. He explained that this rule adds specific references to standards of conduct in the practice of pharmacy for reasonable and prudent practice of pharmacy as well as the duty of licensed pharmacists to report unprofessional conduct and to cooperate with investigations by the Board of Pharmacy. The rule also denotes as unprofessional conduct the violation of these standards.

MOTION: A motion was made by **Senator McGee** to approve Docket No. 27-0101-0404. The motion was seconded by **Senator Keough**, and the motion was **carried by a voice vote**.

27-0101-0405 **Rules of the Idaho State Board of Pharmacy - Notice of Rulemaking** (Pending Rule) - Presented by **Richard Markuson**, Director of the Board of Pharmacy. He explained that this rule extends the expiration date of prescriptions from one (1) year to 15 months.

MOTION: A motion was made by **Senator Werk** to approve Docket No. 27-0101-0405. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:20 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, February 1, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

MEMBERS ABSENT/ EXCUSED:

CONVENED: Senator Compton called the meeting to order at 3:08 p.m.

GUESTS: See attached sign-in list

GUBERNATORIAL APPOINTMENTS

C. Kelly Pearce of Boise, Idaho to be reappointed to the Commission for the Blind and Visually Impaired to serve a term commencing on July 1, 2004 and expiring July 1, 2007. See Attachment #1.

Senator Darrington asked Mr. Pearce where he planned to move his operation during the remodel of the present location. **Mr. Pearce** believes they can accommodate everyone by shifting people. **Senator Darrington** said he believed that Mr. Pearce had brought some stability to the Commission which was sadly needed and wanted to know his views on that. **Mr. Pearce** replied that when he came to the Commission it did not have the greatest reputation. It had unfortunately been through a series of directors and the last couple of directors had been involved in legal situations that caused the State much grief to extract themselves from those individuals. After a search to find a new administrator, it was finally agreed that Ms. Angela Roan (who was not previously in the search) would be the new Administrator. The Commission has been very happy with her leadership. **Senator Darrington** then asked if Mr. Pearce would say in front of this committee that he would remain diligent in not giving way to special interest groups with regard to management of the Commission of the Blind and Visually Impaired. He further asked that Mr. Pearce serve all groups and all people equally without being subjected to the due influence of any particular group and that this be so reflected in these minutes. **Mr. Pearce** said he understood and would make that pledge to the Committee.

MOTION: A motion was made by **Senator Keough** to reappoint C. Kelly Pearce to the Commission for the Blind and Visually Impaired. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

Toni Hardesty of Boise, Idaho to be appointed Director to the Department of Environmental Quality to serve a term commencing July 6, 2004 and continuing at the pleasure of the Governor. See Attachment #2.

Senator Broadsword commented that she wanted some assurance that the views of her constituents in the Silver Valley would be considered.

Senator Coiner commented that he had worked with and admired her predecessor. He said she had certainly taken the helm successfully and was getting the job done without walking on others.

Senator Werk questioned the oversight responsibility. **Ms. Hardesty** said she looks at the outcome and there are times when delegating authority out to another entity may result in a better end result. She suggested that it is sometimes more effective to utilize another agency.

Senator Darrington asked what the state had primacy on? **Ms. Hardesty** replied that the easier answer was what the state did not have primacy on which were: (1) the NPDS and (2) the preventative part of the underground storage program.

MOTION: No motion was made. **Senator Compton** told Ms. Hardesty to come back tomorrow when the committee would have an answer.

DIVISION OF HEALTH

16-0223-0401 **Indoor Smoking** - Presented by **Elke Shaw-Tulloch**, Bureau Chief, Bureau of Community and Environmental Health, Division of Health. These rules assist business owners and the public to interpret the law. The rules were developed in a negotiated rulemaking process that included business owners, law enforcement, legal representatives, legislators, health organizations, and the general public. They provide definitions to aide business owners in preventing smoking in their establishments, and clarify the statute's exemption for bars; bars within restaurants are not exempt and cannot allow smoking. The rules provide requirements that must be met in order for a bar to be physically isolated from a restaurant to allow smoking. For complete testimony, see Attachment #3.

There were questions and discussion among the committee members on the definitions of Section 010.02.a., b., c., Bar Within a Restaurant, and Section 010.10 Incidental Service of Food.

Tom Robb, owner of the Iron Horse Bar & Grill in Coeur d'Alene, addressed the Committee with his concerns with parts of this rule. He explained that the way it is written it would be costly to comply with this rule in restaurants such is his where the bar and restaurant is separate. He also felt that this rule didn't provide a level playing field. See his written testimony, Attachment #4.

Frederick M. Schuerman, owner of the Sockeye Grill and Brewery, addressed the Committee with his concern of the definition of a bar within

a restaurant, Section 010.02. He stated that his objection is that a hallway should be able to connect the two if the hallway is non-smoking. He had also contacted the Health and Welfare Department to get a better explanation. Mr. Schuerman had a professional testing company conduct tests of the air quality in both the entry and hallway. The results of those tests proved scientifically that the non-smoking public would not be exposed to cigarette smoke. He submits that the rule should be defeated or amended so as not to cause an unnecessary hardship on many hardworking Idahoans. See his written testimony, Attachment #5.

Chris Walhof, small business owner and concerned citizen. He explained that he was a chemist and understood the effects that tobacco smoking can produce on a body. He brought up the point that these issues were addressed and debated at length in the last session. He stated that this Committee had the opportunity to acknowledge and enforce last session's legislative decisions out of respect for that decision.

Brad Hoaglun, Lobbyist, representing American Cancer Society. He explained that he participated in the working group that formulated the rules and attended half of the public hearings that were held throughout the state. He stated that second hand smoke was a serious health issue, not a property right. He felt that the Department of Health and Welfare had worked very hard on these rules to resolve the differences and drafting language that was agreed to. He proposed that everyone consider the rising health care costs in the country and that smoking increases those costs. He is willing to work for a common goal to maintain clean indoor air and lessen the impact on businesses. For written testimony, see Attachment #6.

Senator Brandt asked how the rule determined what type of food such as "incidental" food, was served. **Mr. Hoaglun** explained that if the food is incidental, not the major portion of the business, the establishment is defined as a bar. If food is the focus, the establishment is defined as a restaurant. The purpose of these definitions is for law enforcement to know which is which.

Chris Thomas, writer and self-employed resident of Boise. She explained that she writes college text books about how to design and equip restaurants and bars. She asked if the rules for drinking are already enforced and working, why is it so difficult for smoking. She went on to explain the air control and temperature systems and standards. Restaurant/Bar owners are unlikely to put in new ventilation systems. She would prefer not to weaken these rules.

Terry Eastman, Sargent's Restaurant in Hayden. His establishment is similar to Mr. Robb's restaurant. He explained that his concern regarding this rule is the definition of "incidental food" which is still not clear. He has made modifications to his restaurant. One of his concerns is that, according to fire codes, there has to be two exits from any room. If he has to brick a wall in between his restaurant and bar, he would only have one exit from each room. He met with Health and Welfare and was told that the jurisdiction would lie with the law enforcement if there was a violation

to the rules. Another concern was the restroom accessibility. He is still not sure of the definition of "incidental food."

Brad Dixon, Lawyer representing American Heart Association. He said he would like to clear up a few things for the committee. The bill was amended last session. The full definition of bar is "any indoor area open to the public, operated primarily for the sale and service of alcoholic beverages for on-premise consumption and:
(a) the service of food is incidental to the consumption of such beverages or
(b) no person under age 21 is permitted."

He ended by saying that he hoped the rules would be accepted as written since the perspective of the American Heart Association was to protect individuals from second hand smoke.

Dick Schultz, Administrator of the Division of Health, would like to defer his time to Elke Shaw-Tulloch to answer questions from the committee.

Senator Werk questioned Ms. Shaw-Tulloch about the definitions of a bar and a restaurant together and explained that according to how he interpreted that there should be no smoking altogether. He wondered how the Department dealt with that? **Ms. Shaw-Tulloch** replied that that was a huge issue to grapple and they kept going back to discussions with all stakeholders. The intent of the law was to get at the heart of the matter. Restaurants that have bars within them are considered restaurants and no smoking is allowed. Senator Werk asked if the flexibility allowed to restaurants with bars to provide separation was going beyond the scope of the legislation? Ms. Shaw-Tulloch replied that the flexibility is for someone to understand if this is one facility or two facilities. They wanted to protect the restaurant patron by assuring that they were separate facilities.

Senator McGee asked how many establishments, similar to Mr. Schuerman's, fall under this category or how many people have testified since the rules have been put out. **Ms. Shaw-Tulloch** was not sure of the number, but they had received several phone calls, emails and letters. There were few comments during the public hearing that pertained directly to the rules.

MOTION: A motion was made by **Senator Brandt** to accept Docket #16-0223-0401, but reject Sections 010-02 b., c., and d. (on page 149) and also Section 010-10 (on page 151). The motion was seconded by **Senator Keough**, and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:50 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Wednesday, February 2, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Senator Compton called the meeting to order at 3:08 p.m.
GUESTS:	see attached sign-in list

The rules review was conducted by Vice Chair Broadsword

BOARD OF PHARMACY

27-0101-0402 **Rules of the Idaho State Board of Pharmacy - Notice of Rulemaknig** (Pending Rule) (Continued Presentation from Committee Meeting, Monday, January 31) - Presented by Richard Markuson. **Senator Keough** researched whether this rule of a pilot project would be more appropriately placed in statute. Senator Keough reported that her research has shown that this can be done by rule.

MOTION: A motion was made by **Senator Keough** to approve Docket No. 27-0101-0402. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

Senator Compton conducted the rest of the meeting.

MOTION: A motion was made by **Senator Broadsword** to approve the gubernatorial appointment of Toni Hardesty to be confirmed as Director of Environmental Quality, commencing July 6, 2004 and continuing at the pleasure of the Governor. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote. Senator Kelly** will take this to the floor of the Senate.

DIVISION OF MEDICAID

RS14493C1 **Relating to Recovery of Certain Medical Assistance:** Amending Section 56-218, Idaho Code, to further govern Procedure for Claims and Recovery Against the Estate of Deceased Recipients of Medical Assistance. - Presented by **Larry Tisdale**, Supervisor for the Financial Operations of Medicaid. He explained that this would:

- grant subpoena power to the Department in discovering and locating assets
- grant indemnity to financial institutions that provided that

information
- permit the Department to foreclose on medicaid liens to avoid unnecessary expenditures.
- eliminate state exemptions
- extend filing dates to 3 years

MOTION: A motion was made by **Senator Werk** to send to print RS14493C1. The motion was seconded by **Senator Brandt**, and the motion was **carried by a voice vote.**

RS14460 **Stating findings of the Legislature:** Concerning Medically Indigent Health Care and Directing the Development of a Test Program by the Department of Health and Welfare in Cooperation with Participating Counties and Requiring a Report. - Presented by **David Rogers**, Administrator for the Division of Medicaid. He explained that the 2003 legislature directed the Department to explore and evaluate approaches in which present county and state catastrophic funds could be used to draw down federal match under the State's medicaid program. This concurrent resolution sets forth the purpose of proposed key design elements of the program and the funding mechanisms for the initial test program in order to confirm legislative approval prior to implementation.

Senator McGee asked why Canyon County was left out? **Mr. Rogers** replied that it was a voluntary effort and other counties stepped up.

Tony Pinelli, Idaho Association of Counties, stated that the counties are very supportive of the proposal. He addressed Senator McGee's comment and said that Canyon County was concerned as it was still considered a medicaid expansion. It is a slight expansion, but Canyon County wants to see how it works.

MOTION: A motion was made by **Senator Werk** to send to print RS14460, The motion was seconded by **Senator Darrington**, and the motion was **carried by a voice vote**.

RS14492 **Relating to Administration Procedure for Small Estates:** Amending Section 15-3-1201, Idaho Code, To Specify the Powers of the Director of the Department of Health and Welfare to be considered a Successor of the Decedent for Recovery of Medical Assistance. - Presented by **Larry Tisdale,** Supervisor for the Financial Operations of Medicaid. He explained that the purpose of this RS was to include the Department of Health and Welfare as successor in order to simplify the process on small estates where the would-be beneficiaries of the estate have no financial incentive to help clear up the estate matters.

MOTION: A motion was made by **Senator McGee** to send to print RS14492. The motion was seconded by **Senator Broadsword**, and the motion was **carried by a voice vote**.

RS14491 **Relating to Recovery of Certain Medical Assistance:** Amending Section 56-218, Idaho Code, to Limit Distribution of the Estate Except Under Conditions Specified. - Presented by **Larry Tisdale**, Supervisor for the Financial Operations of Medicaid. He explained that the purpose of

this was to clarify that in the event of two spouses still alive and one being on Medicaid; that on the death of one spouse, the property would not be distributed through the probate process to anyone other than the other spouse.

MOTION: A motion was made by **Senator Keough** to send to print RS14491. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote.**

RS14745 **Relating to the Idaho Prescription Drug Program:** amending Title 56, Idaho Code, By the Addition of a New Chapter 14, Title 56, Idaho Code, To Establish the Idaho Prescription Drug Program, To Set Program Goals, To define Terms, To Provide for Rebate Agreements, To Set Forth Rebate Amounts, To Provide for Discounted Prices for Qualified Applicants, To Provide for Operation of the Program, To Provide for Action Regarding Nonparticipating Manufacturers and Labelers, To Establish a Dedicated Fund, To Provide for Annual Summary Reports, To set Forth Duties of the Department, To Provide for Third-Party Contracting, To Provide for the Coordination of Medical Assistance Programs, To Authorize Rules and to Authorize the Department to Seek Necessary Federal Waivers. - Presented by **Steve Tobiason**, lobbyist, representing AARP. He explained that this program could be called "Affordable RX Idaho." He went on to say that it was not Medicaid and was not an insurance product. It is a pharmacy discount card, designed for low-income residents of Idaho. In order to qualify for this discount card, one must:

- Be an Idaho resident
- Pay $10 application fee for one person, or $15 if multiple (family)
- Have income must be equal to or less than 250% of poverty level
- Do not have existing health care prescription coverage and have not had so in the last 90 days

This program is voluntary for the participant, the pharmacy, and the manufacturer.

When the participant goes to the pharmacy and presents the card, payment will be based upon two factors; (1) the existing Medicaid rate in the state of Idaho less dispensing charges, plus (2) manufacturer rebates negotiated by the state.

The program would be administered by the Health and Welfare Department of Idaho. They would process the application, issue the cards, sign up the participating pharmacies, and negotiate rebates with manufacturers and make an additional payment to the pharmacists. They are already structured to maintain this program. Monies from rebates will be deposited into a fund so tracking the money will be possible. The bill also provides for contracting with third parties, if appropriate. A list of supporters is shown on Attachment #1.

For more information on this program, please see Attachment #2.

MOTION: A motion was made by **Senator Keough** to send to print RS14745. The

motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote.**

RS14720 **Relating to Mandatory Income Withholding for Child Support**; Amending Section 32-1214B, Idaho Code, To Revise the Definition for the Term "Plan Administrator" And to Define the Term "Plan Sponsor." - Presented by **Lyn Darrington** with The Gallatin Group, representing Regents Blue Shield of Idaho. She explained that this RS makes Idaho law consistent with federal definition.

MOTION: A motion was made by **Senator McGee** to send to print RS14720. The motion was seconded by **Senator Brandt**, and the motion was **carried by a voice vote.**

MINUTES: A motion was made by **Senator Coiner** that the minutes of Tuesday, January 25, 2005 be approved as written. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Keough** that the minutes of Monday, January 17, 2005 be approved as written. The motion was seconded by **Senator Broadsword**, and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Broadsword** that the minutes of Monday, January 24, 2005 be approved as written. The motion was seconded by **Senator Keough**, and the motion was **carried by a voice vote.**

ADJOURN: The meeting was adjourned at 3:48 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Thursday, February 3, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator Werk, excused
CONVENED:	Senator Compton called the meeting to order at 3:05 p.m.
GUESTS:	see attached sign-in list.

Brent D. Reinke, Director - Idaho Department of Juvenile Corrections - Presentation on Juvenile Justice in Idaho.

He discussed what has happened in the last ten years from the time when the Agency was formed in 1995. The mission of the Department is to prevent and reduce juvenile crime with partnership of communities. They work with 44 counties and 201 cities. He pointed out that they were below the Chinn (Karen Chinn & Associates) projection in custody cost and in custody population. Idaho Department of Juvenile Corrections (IDJC) has custody of 6% of Idaho's youth on County probation. He then introduced **Dr. Ryan Holberg**, Clinical Services Administrator and Clinincal Psychologist, to give an idea of the challenges IDJC is faced with. He explained the juvenile population problem areas and special needs of the 420 that are in custody. He pointed out that 44% of the juveniles with criminal behavior are diagnosed with mental illness. Some are treated with programs and medications, others may need to be sent to other psychiatric services. (See Attachment #1)

RS 14601C1 **Relation to Scholarships:** Amending Chapter 43, Title 33, Idaho Code, by the Addition of New Sections 33-4316, 33-4317, 33-4318, 33-4319, 33-4320, 33-4321, 33-4322, 33-4323, 33-4324, 33-4325, and 33-4326, Idaho Code, To Provide Definitions, To Provide Eligibility, Maximum Amounts and Conditions for an Idaho Health Sciences Scholarship, To Provide for the Maximum Number of Scholarships in any Given Fiscal Year, To Provide for Ineligibility Upon Discontinued Attendance or Change or Major, To Prohibit Discrimination in Awarding Scholarships, To Provide Duties of Eligible Post secondary Institutions, To Designate the State Board of Education and the Board of Regents of the University of Idaho as the Administrative Agency and to Provide Duties of the Board. -

Presented by **Senator Darrington**. He explained that 90 million was taken from this fund a couple of years ago to balance the budget. He believes this fund should be endowed, which probably won't happen until economic times improve. This year there will be between 22 and 24 million that will drop into that fund from the tobacco settlement. That should increase over the next 15 to 18 years to about 35 million per year. The interest from this fund has been spent on smoking cessation and health related problems. **Senator Lodge** has been appointed Chairman of this Millennium Committee although he is still on the committee. Senator Darrington suggested that this health related scholarship program could be a legacy to the legislature and he presents this bill before you today. It is a merit based scholarship (3.0) program for all the health related programs offered by state colleges and universities in the state of Idaho. The state Board of Education would develop the rules and JFAC would fund it. This scholarship would be available up to $1200 per year for everyone in the four year program for the third and fourth year. Technical, professional, or associate programs which may last only one or two years, are included in the scholarship and would kick in the second semester for those programs.

MOTION: A motion was made by **Senator Broadsword** to send to print RS14601C1. The motion was seconded by **Senator Brandt**, and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Kelly** that the minutes of January 26, 2005 be approved as written. The motion was seconded by **Senator Brandt**, and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:00 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, February 7, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Senator Compton called the meeting to order at 3:08 p.m.
GUESTS:	See attached sign-in list

S1078 Relating to the Children's Trust Fund; Amending Section 39-6007, Idaho code, To Clarify that the Check-Off Expires when the Balance in the Trust Fund reaches Two Million five Hundred Thousand Dollars. - Presented by **Nancy Hausner**. She explained that the Children's Trust Fund provided many programs that were designed to strengthen families and help to prevent child abuse throughout the state of Idaho. This bill concerns the "sunset clause," which originally stopped further collections when the total of 2.5 million had been distributed to the children's trust fund. The bill clarifies that the sunset provision states that the check-off expires when the balance in the trust fund reaches 2.5 million. (See Attachment #1)

MOTION: A motion was made by **Senator Coiner** to send S1078 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote. Senator Coiner** will sponsor S1078 on the Floor.

S1079 Relating to Services to Victims of Cystic Fibrosis; Repealing Section 56-1019, Idaho Code. - Presented by **Dick Schultz**. He explained that the law was passed in 1978 with an appropriation of $24,000 from the general fund budget, and was for persons suffering from Cystic Fibrosis who were twenty-one (21) years or older. There has been no increase in the fund since then. At the time this law was passed most individuals with CF were not expected to live to adulthood. Now with treatment, the median life expectancy is 33.4 years of age. The amount paid out for medications and outside services FY2004 was $74,773.54 and for FY2005 through January has already reached $85,603.48. About 9o% of the increase is due to new drug costs. The number of patients receiving care in the program is 32. The Department of Health and Welfare can no longer shift money from the childhood immunization program to fund this program. A high priority is to have a CF doctor in Idaho. (See Attachment #2)

Dr. Perry Brown, a pediatrician and Assistant Director, CF Clinic of Idaho,

gave a presentation on Adults with Cystic Fibrosis and Adult CF care in Idaho. He explained that Cystic Fibrosis was a genetic disease affecting approximately 30,000 children and adults in the United States. The quarterly tests and medications are expensive. Dr. Brown is concerned that if SB1079 is approved adult CF patients will lose coverage and the Adult CF Clinic would likely need to be discontinued. The only CF Foundation accredited adult CF care that would be available to patients would be out of state, in Salt Lake City, Spokane, Seattle, or Portland. Dr. Brown respectfully proposed that SB1079 be rejected, or pass SB1079 and provide an alternative means of funding this worthwhile program. He would request consideration be given to carving out an inclusion of "adults with CF" in the state's Medicaid program, where it might be funded 30% by the state and 70% funded by the federal matching funds. He also proposed that consideration be given to maintaining funding for the Adult CF Clinic. (See Attachment #3)

Marilyn Sword, Executive Director of Idaho Council on Developmental Disabilities gave testimony to retain the program for adults with Cystic Fibrosis in Idaho and oppose S1079. She explained that this rule may not save money, but possibly shift the costs to other state entities. She questioned if there had been any negotiation with the drug companies. She also asked if other solutions were considered; such as seeking additional funds, leveraging other funds, or implementing a sliding scale that targets help for those with the most expensive costs. The Council would hope that the importance of this program to people with a life threatening illness is recognized and encourages the Department to find a way to avoid its elimination. (See Attachment #4)

Christian Hooper, CF patient and participant in the CF assistance program planned to testify at this meeting, but was unable to attend due to his illness. (See Attachment #5)

Dale Hooper and Carol Ann Floyd-Hooper, father and mother of Christian, testified of the difficulties of raising a child with Cystic Fibrosis. They described how the Children's CF program had helped Christian to attend a "normal" public grade school, graduate from high school, and to receive the life-sustaining treatments, medications, expert doctor and CF Clinic care. They have watched their son struggle every day of his life and now at age 23, he is married and works full-time, has attended BSU, and has served in his church. She explained that if this program is cut and funding is lost, her son, along with other adult CF patients, would be unable to obtain the life-sustaining medications, see a certified adult CF physician, or continue to work and contribute to the community. (See Attachment #y)

Kendra Hooper, wife of Christian was also at the meeting to testify. She explained in an emotional testimony that she was learning more about Cystic Fibrosis because of the needs and struggles of her husband. Without this program, they would not be able to complete their hopes and dreams of living an independent life like their parents and others. She states that Christian really needs the support of this program and would hate to see the set backs that might arise if the CF clinic for adults gets disbanded. (See Attachment #5)

Also received in support of this program were emails from **Paula Hunt**,

mother-in-law of Christian Hooper (see Attachment #7), **Sara Ward**, a CF patient (see Attachment #8), **Julie Cathers**, mother of two children diagnosed with CF (see Attachment #9), **Tami and Brad Egbert**, parents of 19 year old son, Jason, who has CF. (See Attachment #10, #11)

MOTION: A motion was made by **Senator Coiner** to hold in committee S1079 to look for a better solution. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

S1087 Relating to Administration Procedure for Small Estates; Amending Section 15-3-1201, Idaho Code, To Specify the Powers of the Director of the Department of Health and Welfare to be Considered a Successor of the Decedent of Recovery of Medical Assistance. - Presented by Larry Tisdale

Senator Compton announced that S1087 would be pulled from the agenda and held in committee.

S1090 Relating to Mandatory Income Withholding for Child Support; Amending Section 32-1214B, Idaho Code, To Revise the Definition for the Term "Plan Administrator" and to Define the Term "Plan Sponsor." - Presented by **Lyn Darrington**, The Gallatin Group, representing Regence BlueShield of Idaho. She explained that this was a technical correction that amends the definition of plan administrator to make it consistent with federal ERISA law and the 1998 Child Support Performance and Incentive Act (CSPIA). (See Attachment #12)

MOTION: A motion was made by **Senator Brandt** to send S1090 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote. Senator Brandt** will sponsor S1090 on the Floor.

MINUTES: A motion was made by **Senator Keough** that the minutes of January 27 be approved as written. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Broadsword** that the minutes of January 31 be approved as written. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:33 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, February 8, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: Senator Keough, excused

CONVENED: Senator Compton called the meeting to order at 3:04 p.m.

GUESTS: See attached sign-in list

MINUTES: A motion was made by **Senator McGee** that the minutes of Tuesday, February 1, 2005 be approved as written. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

PRESENTATION ON MEDICAID BUDGET

SPEAKER: **Karl Kurtz** - Director, Department of Health and Welfare
He explained that he was here to support Mr. Rogers and to answer any questions that the committee might have as it relates to Medicaid or the Department. He appreciates the opportunity to speak to the senators.

SPEAKER: **David Rogers**, Administrator, Division of Medicaid
He began his presentation with an overview of Medicaid programs from his handout entitled "What Services, Populations, or Policies are Driving Increases in Medicaid" (see attachment). The Medicaid program became law in 1965. The states operate medicaid programs within Federal guidelines and are jointly funded by federal and state governments, 70% and 30%, respectively. A Medicaid State Plan defines how a state will operate its Medicaid program and functions as a contract between the federal government and the state.

Senator Compton asked how Idaho compared with other states since one out of seven Idahoans are covered by Medicaid? **Mr. Rogers** did not have that data. He went on to explain the chart showing the general fund history with projections into 2006. Medicaid accounted for 4% of the general fund's spending in 1987 and in 2005 it was up to 14%. Another chart showed the breakout between caseload and medical inflation. New procedures, tests, and medicines make up a part of the inflation, and the increase in caseloads is mostly children. **Senator Broadsword** asked if he had provided information showing a breakout of how many were using

which services. **Mr. Rogers** thought that the expenditures by services were available in Facts, Figures, and Trends. Because Medicaid is an income-based program, it is very sensitive to economic conditions. As the economy weakens, the caseload increases. Federal law mandates certain categories of people be covered in each state Medicaid program. Eligibility is determined by factors such as income, pregnant women, elderly, disabled, residency, age, and citizenship.

Mr. Roger's handout showed growth charts of the average monthly caseload for "Children's Health Insurance," "Pregnant Women & Children," and "Elderly & Disabled." **Senator McGee** asked about the huge jump in the "Pregnant Women & Children" category as compared to the "Elderly & Disabled." **Mr. Rogers** replied that there was a very concerted effort in Idaho regarding limitations to enroll eligible children in coverage available through these programs. That outreach effort purposely was framed as Children's Health Insurance; there was no distinction made between Title IX of regular Medicaid and the Children's Health Insurance Program (CHIP) under Title XXI. The effort was to get every eligible child enrolled in the program. The impact of that was felt in the regular Medicaid program.

Mr. Rogers went on to say that the elderly and disabled growth had been steady and was expected to continue to be a steady incline. The significant thing about that is that these populations are very different in the care required. The cost of coverage for children covered under Medicaid or CHIP is relatively inexpensive compared to the cost for the elderly and disabled. State Medicaid programs vary because of differences in optional service coverage; the limit on mandatory and optional services; and provider reimbursement levels. He showed the difference of costs between optional services at 56% and mandatory services at 44%. Prescription drugs are an optional service under federal law and account for 15% of that total cost.

Senator Darrington stated that Idaho had fewer optional services than other states. There has been talk about Cystic Fibrosis (CF) and the possibility of making that an optional service under Medicaid. He asked if most of the optional services, which we are not participating in today, were programs that require a waiver or were they specified programs under the law that we chose not to participate in? **Mr. Rogers** replied that most were permitted under federal law and would not require a waiver, but would require a change in our State plan and contract. A waiver is simply a request and permission is granted by the federal agency to waive a certain federal regulation. CF coverage might be a good example of a waiver because categorical eligibility is generally set up in broad categories. We would be asking to waive certain regulations so it could be targeted to a more defined group, a group with a specific diagnosis. Generally federal regulations don't allow you to go into these broad categories and target a specific group of individuals with a specific diagnosis. We would ask for a waiver in that circumstance. **Senator Darrington** said that he assumed then that if we did participate in an optional service, the state could determine the rate by statute or by rule. **Mr. Rogers** said that was correct.

Mr. Rogers continued with his presentation and discussed the Top Ten

Service Categories. He focused on the top three which were Prescribed Drugs, Inpatient Hospital, and Nursing Facility. The pricing of Prescription Drug increases have driven the cost increases up in 2004 and 2005. The price increases were more modest in 2004 due to management efforts as well as changes in the reimbursement methodology. Price increases are expected to be at a slower rate in 2005 for the same reason.

Senator Darrington asked if this information would be helpful when AARP comes to present their program on Thursday. **Mr. Rogers** said it probably would. **Senator Broadsword**, in follow up on the AARP card, stated that there had been a lot of questions about how much the Medicaid program would be involved, and how many employees and hours it would take to go after those rebates and if that was a cost-effective method. **Mr. Rogers** said he thought there might be some resources to handle this.

Karl Kurtz took the podium to say that 35,000 people in Idaho may be eligible for both medicare and medicaid that have not signed up for medicaid. When they sign up for part D in medicare, we have to pay our 90% part. The enrollment in that program will almost double if every eligible individual signs up for part D, which makes this a really wild card.

Senator Werk clarified with Mr. Rogers that we would not get rebates because the law specifically forbids negotiation of prices with the pharmaceutical industry. The federal government will now collect rebates for medication that is dispensed to these medicare beneficiaries that are also duly eligible for medicaid. Currently medicare doesn't provide drug coverage so the department pays for the prescriptions and collect the rebates within Medicaid.

Mr. Rogers continued by discussing the Inpatient Hospital cost and said that overall expenditure's growth was expected to slow for 2005. With regard to Nursing Facilities, service users declined in 2004 due, in part, to availability of home and community-based services as institutional alternatives. The expectation is that total expenditure growth will increase for 2005 (service use and cost per user). Nursing facilities and A&D waivers tend to track pretty much the same regarding growth. Nursing facilities are a bigger slice of the pie, the 3.5% of the growth rate translates to about five million dollar and that same 3.5% in A&D waivers is about two and a half, or three million dollars. He went on to discuss developmental disability related services and that the overall expenditure growth was expected to increase at a faster rate in 2005. Regarding Mental Health, the service users increased dramatically in 2004. The overall expenditure growth is expected to slow, but still remains at a significant growth level.

Senator Broadsword mentioned that with DD related costs, she had heard that transportation costs were high. **Mr. Rogers** said that the transportation costs were not included in these cost figures, but were shown as a separate line item cost. **Senator Werk** confirmed with Mr. Rogers that the mental health drugs were not included in these figures, but were shown in the prescription drug area. **Senator Coiner** asked if this money that was spent up front was diminishing what we spend in later years on the same patients? **Mr. Rogers** said they had evidence that it did from a wealth of

data sources.

Mr. Rogers continued with his presentation and discussed cost containment strategies:

- Restrict eligibility - 21 states decreased eligibility in 2004, Idaho did not
- Reduce benefits - 19 states decreased benefits in 2004, Idaho had modest benefit reductions in 2003
- Lower provider payments - all 50 states froze or reduced provider payment rates in 2004. Idaho Medicaid implemented targeted reductions or adjustments in provider rates beginning in 2002.
- Manage health care better - Idaho Medicaid initiated or expanded common managed care approaches by utilization management, primary care case management, and pharmacy benefits. management. Idaho Medicaid continued to re-balance the long-term care system.
- Other opportunities

Mr. Rogers went on to explain that many states look at managed care as an option. The majority of medicaid beneficiaries in the nation are enrolled in some type of traditional managed care program, like an HMO. In Idaho, however; we don't have that kind of managed care market, but it is a very viable alternative to look at regarding cost containment. Idaho Medicaid initiated or expanded common managed care approaches in the management areas of utilization, primary care cases, and pharmacy benefits. They also continue to re-balance the long-term care system with home and community-based services.

Senator Compton asked about the decision units that were shown in the H&W presentation of the Budget and what his department had done regarding cost reduction. As he recalled, the numbers were very impressive. He asked for those charts to be pulled out of that presentation and sent over to the Senators of the committee. **Mr. Rogers** agreed to the request.

Mr. Rogers presented the proposed cost containment for SFY 2006:

- To continue the pharmacy management with increasing use of a Prior Authorization Program and in managing mental health drugs
- To expand DD care management by creating consumer-directed options
- To continue re-balancing long-term care
- To address mental health service with credential mental health providers and a redesign of mental health benefits
- To expand estate recovery
- To provide a more aggressive payment review of the clinical claims review and of fraud and abuse investigations.

Regarding the pharmacy management, the analysts have taken a look at the payment data and pointed out where it didn't quite line up with good care. **Senator Compton** asked why we were not doing this survey rather than accepting what Eli Lilly provided. **Mr. Rogers** replied that Eli Lilly is

actually providing funding for a behavioral management company to analyze this information. The thought was to take advantage of what was already done. The steering committee looks at the overall program. Beyond just getting the information, the trick is to get the information to prescribers so that they have that information. From the information received, about 70% of the mental health drugs are prescribed by the primary care physician, not a specialist. Education can improve the care and also save some money.

Other strategies that **Mr. Rogers** discussed were:

- Medicaid maximization
- Selective contracting
- Managed care arrangements
- Alternatives to cost reimbursement
- Beneficiary cost sharing

Senator Broadsword asked for a brief overview of what can be done about misuse, overuse and abuse of the system. **Mr. Rogers** replied that there were quite a few mechanisms available from prosecution to recoupment and other penalties in between, including barring providers from participating in the program. **Senator Broadsword** responded that she was talking about the misuse by participants who are going to the doctor every day of the week or as often as they want because they like the interaction with the physician and his nurse. **Mr. Rogers** replied that Healthy Connections would see that they go to their primary care physician and be referred by that physician, if necessary, to go to another care provider. Payment is not made unless there is authorization from the primary care provider. We have another tool called lock-in to lock in providers to either specific physicians or pharmacies. Doctors sometimes shop to get different drugs and different pharmacies. A participant may then be required to use the services of a particular pharmacy. These tools are allowable under federal law, with a due process requirement.

Senator Broadsword asked how primary care physicians limit use to medicaid patients who are coming in daily, or are on the phone and if they can't reach them on the phone, they go to ER? **Mr. Rogers** said he didn't know since that was a behavioral issue and difficult to address. Again Healthy Connections provides educational services for participants. **Senator Compton** asked if there was any way the physician could provide the guidance. **Mr. Rogers** said again they would utilize Healthy Connections.

Senator McGee asked what the President's budget with a 45 billion dollar reduction to the Medicaid program would mean for Idaho. **Mr. Rogers** had some preliminary information, but no details at this time. He mentioned the scrutiny on intergovernmental transfers and other funding mechanisms that will take a big hit, but said we should not be that affected that much here in Idaho. The President's proposal actually proposes to decrease the reimbursement rate to 50%, but we have it done by private providers and actually get 70% federal financial participation. There are also some changes to pharmacy costs. A new law is being proposed for the average

wholesale price that is referred to as the average sale price. He said the department did not know at this time how that is calculated. They will look at the financial impact on that, but it may take awhile.

Senator Compton said they still expect a good bit of growth even though there might be cuts in various things, but they are going to try to manage it at a 7% slope. **Mr. Rogers** said that there was also some increased spending in the President's proposal. One of the proposals is an outreach for Children's Health Insurance.

Senator Compton mentioned some areas that they were going to be asked about and would like Mr. Roger's brief opinion.

Senator: *Co-pay?*
Mr. Rogers: Concerns about it - caution.
Senator: *Self-declaration?*
Mr. Rogers: It is not the problem that people make it out to be. The department has a 97% accuracy rate and they are checking it out.
Senator: *Isn't the pharmacy rate of $4.94 higher than other states?*
Mr. Rogers: Our thoughts on this are not to reduce this pharmacist fee and get the discounts from the manufacturers.

Senator Compton said that the committee will soon be looking at the two pharmacy programs: Affordable RX and RX Idaho. Do you have analyst or R&D teams to work on these issues? **Mr. Rogers** said they did not have a R&D per se, but they had some good folks in data resources.

Senator Compton says we should take pride in the fact that Idaho has a very good program and it stacks up exceptionally well nationally. The department has done some creative things to control the costs, and also to deliver quality health care.

Senator **Darrington** commented that it had been ten years since we privatized our care managers and since then I have had some grave reservations regarding this. We have created a large category of people out there who are now in position to lobby the legislature for a larger slice of the pie, which disturbs me a great deal. My question is if the Department has ever analyzed if this was cost effective or not? I would like to know about that at another time.

Senator Coiner asked what oversight and controls there were on the group that Senator Darrington referred to.

ADJOURN: The meeting was adjourned at 4:42 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Wednesday, February 9, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Senator Compton called the meeting to order at 3:06 p.m.
GUESTS:	See attached sign-in list

Senator Darrington made it known to Chairman Compton that he would be called out of the meeting for a few minutes to go to another meeting to present a bill.

MINUTES: A motion was made by **Senator Broadsword** that the minutes of Wednesday, February 2, 2005 be approved as written. The motion was seconded by **Senator Kelly**, and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator McGee** that the minutes of Thursday, February 3, 2005 be approved as written. The motion was seconded by **Senator Broadsword**, and the motion was **carried by a voice vote**.

RS14800 Relating to Care for the Medically Indigent; amending Section 31-3501, Idaho Code, To State Policy to Provide Care to Persons Who are United States Citizens or Legal Residents; Amending Section 31-3502, Idaho Code, To Further Define Terms and to make a Technical Correction; Amending Section 31-3503, Idaho Code, to Govern Authority of the Board of County Commissioners to Provide Services to the Point of Stabilization and Transfer to the Home Country; and Amending Section 31-3510A, Idaho Code to Establish Liability of Certain Employers of Non-United States Citizens. - Presented by **Dan Chadwick**, Executive Director of Idaho Association of Counties.

He explained that this bill deals with who pays for indigent health care in this state. There are limited resources as heard in the recent JFAC meeting. The issue relates to who pays for indigent health care programs in this state. There is a failed federal policy on immigration that plays very clearly with this legislation. Where should the burden fall and who should pay for indigent services when we deal with illegal immigrants? This particular RS is an attempt to deal with a part of that policy. The state

cannot solve the entire immigration policy, but the legislature should look at who is responsible for these types of claims. One claim for an illegal alien in Payette County costs over $400, 000. The burden fell on the county first, and then the state catastrophic fund picked up the balance of that claim.

Section 1. Policy. It states that the state will pay for medical indigents in certain circumstances. He ask that the legislature add language to say that the state will pay for claims to U.S. citizens or those that are legally present and that should be in the basic policy of the state.

Section 2. Residency is defined. There are exclusions to residency including those that are in the state for temporary purposes, for education, vacation, or seasonal labor. He recommends approval for the addition of language to say: or who is not a citizen of the U.S. or who otherwise does not have legal status pursuant to the laws of the U.S.

Section 3. Powers and Duties of the County Commissioner. This discusses the provision of emergency services. There would be no denial for anyone requiring emergency medical services. That would be paid up to the point of stabilization and provide transport to original residency, or to an appropriate federal agency responsible in these circumstances. The issue of co-payment, the catastrophic deductible at $5,000 would be paid by the county for an indigent that has a medical emergency.

Section 4. Reimbursement. This provision relates to employers, or persons who employ illegal immigrants. If a person knowingly and willfully hires someone that is an illegal immigrant and there is a health care issue for that person or members of that person's family, while in that employment, then the person who provides the employment would possibly be the responsible party. The last line of the legislation says that if the person that provides the employment does so in good faith and relied on the documentation received from the immigrant, and the face of this documentation appears to be authentic, they may not be subject to the provisions of this potential liability.

Senator Darrington comments that the last sentence referenced is an affirmative defense to a cause of action to force the employer to pay. He assumed that the words "cause of action" would be a judicial proceeding. by the County Commissioner? **Mr. Chadwick** said it could be judicial. In the first instance if the employer could show the County Commission the documentation that he relied on, it might defer a cause of action or judicial action being taken. If the Board of Commissions was not sure of the reliability issue, and it goes to court, it could be shown in a judicial action as an affirmative defense to the potential liability.

Senator McGee wanted to clarify that (1) no denial of emergency service will take place and (2) seasonal labor as defined in line 12 would count as a resident. **Mr. Chadwick** insured that (1) emergency cases are taken care of; and (2) seasonal laborers are not considered residents for

medically indigent purposes under the current law.

Senator Kelly asked how the seasonal worker was handled if he or she needs medical care. **Mr. Chadwick** replied that they were not covered under the catastrophic program. They are either absorbed by the health care provider or some other charity care has to be provided in those circumstances.

MOTION: A motion was made by **Senator Broadsword** to send to print RS14800. The motion was seconded by **Senator McGee** and **Senator Werk** asked for a roll call vote. **Senator Kelly** said this RS was very broad and vague.

Maria Torres, member of Ada Coalition at Work, was called to the podium. She was opposed to the bill and said it only shifted the costs to state hospitals which would increase insurance premiums. More people would then be requesting county health services. She claims that RS14800 will only alienate Latino communities and many of the 64,000 immigrants living in Idaho. She called it a racist bill.

Senator McGee would like to explain his vote. He stated that in our society now, words like "racist" were thrown around easily and without much reflection. He went on to say that when this committee is voting to print a bill brought to us by an organization that is well respected like the Idaho Association of Counties, we should be very careful when throwing around labels in terms of a piece of legislation or a bill that we are going to print. It is too easy to label someone something that they are not.

ROLL CALL VOTE The **roll call vote** was then called for. **Aye votes were: Keough, McGee, Compton, Coiner, and Broadsword. Nay votes were: Werk and Kelly.** Absent at the time of the vote were: Darrington and Brandt. The roll call vote was carried to send RS14800 to print.

RX Idaho Prescription Drug Program Presentation - **Bill Roden**, representative of PhARMA. He explained that this was not a PhRMA program, but a program that was developed with the cooperation of PhARMA, and initially a program for the state of Idaho. It was launched about a year ago and was designed to bring together all of the various programs that offered either free or discounted drugs to the uninsured population of Idaho. These patient assistance programs are available by practically all pharmaceutical companies, but they are all individual and you must know where to go to access the program.

He further explained that after research and a lot of work, PhARMA, with the state of Idaho put together a program where there was one consolidated site. Information provided by the patient would link them to the appropriate site to see if they would qualify for the program. Most of the programs cover patients between 200 and 300 percent of the federal poverty level. It is based on income and whether or not if you have insurance coverage.

There is no cost for this program, and it is available on the internet. (See presentation on attachment #1). The 2-1-1 Idaho CareLine is a free,

statewide, bi-lingual telephone information and referral available to link Idahoans with health and human service providers and programs (see attachment #2).

ADJOURN: The meeting was adjourned at 4:12 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Thursday, February 10, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	The meeting was called to order at 3:14 p.m.
GUESTS:	See attached sign-in sheet

RS14945 State Findings of the Legislature and Rejecting Certain Rules of the Bureau of Occupational Licenses Governing the Board of Social Work Examiners. - **Senator Broadsword**

MOTION: A motion was made by **Senator Werk** to send to print RS14945. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote.**

S1089 Relating to the Idaho Prescription Program - Presented by **Steve Tobiason,** Attorney, speaking on behalf of AARP. He explained that if this bill is passed and implemented, AARP receives no financial interest.

He began by saying that there was concern about the rising cost of medications. In Idaho hundreds of thousands of people have private insurance coverage, about 170,000 are on Medicaid. In both areas cost containment is a concern. The primary function of cost containment within the healthcare market has been negotiation. Medicaid has begun the process of negotiating with manufacturers to see if they can get a state rebate that will reduce the overall cost in the Medicaid pharmaceutical program. This bill is all about negotiation, using the same principals that are used by Blue Cross, Blue Shield, Primary Health, etc. and the State of Idaho in the Medicaid program. This bill simply extends this concept to lower income citizens of this state up to 250% poverty levels that do not have a health care coverage that provides a prescription benefit.

He went on to explain that this bill was a voluntary program for the consumer, the pharmacist, and the manufacturer. The consumer would pay $10 for an individual or $15 for a family for a card. People receive a discount in price based on volume. The concept is that the customer goes to a participating pharmacist and pays the price that is electronically

provided with a negotiated supplemental or state rebate that is already factored in. **Senator Compton** confirmed that there was no billing done by the state and was for people with no other insurance and that the customer pays at the time of purchase. **Senator Coiner** asked how does that affect what the pharmacist pays? **Mr. Tobiason** referred him to the flow chart (see Attachment #1). The pharmacist will receive money from the customer and from Affordable RX, the dedicated fund, and will equal the state Medicaid rate, which is currently equal to average wholesale price minus 12% plus $4.94 for a dispensing fee. **Senator Coiner** asked what would be the anticipated lag time for the rebate to come back to the dedicated fund and then back to the pharmacist. **Mr. Tobiason** replied that the bill says they must pay weekly or biweekly. The money coming from the manufacturer is billed quarterly. **Senator Coiner** asked about the interim time period. **Mr. Tobiason** said the projection was about $300,000 from card applications with an additional appropriation of about $175,000.

The department has an existing infrastructure in terms of the computer program which is already being used for Medicaid. The department is in the process of replacing the computer program that operates the Medicaid program. The target date for the new system is 2008 which coincides with the implementation date for Affordable RX and the RFP that will be submitted this spring will include this program. It would be costly if this opportunity was missed and had to be added at a later date.

In closing, **Mr. Tobiason** referred to a list of 14 supporters of this bill (see Attachment #1). He explained that the objective of this bill is to make prescription medications affordable to those least able to pay full retail prices. There is a difference between this program and what is already available so the consumer can use whichever works best for their situation. These programs can work side by side. It is intended to apply and utilize both generic and brand name drugs. Oftentimes for consumers, the greater savings is in the generic area if it is therapeutically appropriate. The price will not vary among the participating pharmacies.

SPEAKER: **Joe Bruno** - Mr. Bruno served as the State Representative for the towns of Raymond and Windham, Maine in the 116th, 118th, 119th, 120th, and 121st Legislative Sessions. In the 121st Legislative Council he was re-elected House Republican Leader. He is also a pharmacist (see his bio, Attachment #2). In 2000, Maine added the Maine RX program to coincide with Healthy Maine Prescriptions which had been in place since 1975. Healthy Maine Prescriptions with a 20% co-pay is not a medicaid program. He believed that the Maine RX program was successful and not a major impact on the pharmacists. When the State cut the reimbursement rate on the medicaid program, it hurt the program because everything is tied to that reimbursement rate. He feels this is the one way to give people a discount on their prescriptions and to negotiate with the manufacturers. **Senator Compton** commented that all the senators were getting e-mails from small pharmacists around the state. He asked how they could reassure these concerned pharmacists that this won't put them

out of business. **Mr. Bruno** replied that there was a misunderstanding as to what the bill actually does. It is voluntary. In Maine one in three accept the program. Some smaller pharmacies advertise that they accept Maine RX as opposed to some of the larger pharmacies like Rite-Aid, CVS, Walmart, who do not accept the program.

The wage rates are 30% higher in Maine than in Idaho and there is also a shortage of pharmacists in Maine. Idaho's reimbursement rate is quite different at AWP minus 12% plus $4.94 compared to Maine at AWP minus 15% plus $2.35 and yet there are pharmacists that accept that lower rate. **Senator Compton** asked about the paperwork that would impact the pharmacist. **Mr. Bruno** said there was none since it was all electronic. The price is calculated and charged to the customer. **Senator Compton** then asked about the money flow. **Mr. Bruno** said that from his experience, during the first six months there was no supplemental rebate in the bank to give a further discount so the consumer paid the medicaid price of the prescription. After negotiations were going on and manufacturers were signing up with supplemental rebates, the money was put into a bank account and a certain percentage, about 1 percent, is withheld from the department to administer the program. The state would then cut a check to the pharmacist for the regular medicaid reimbursement plus the supplemental rebate amount every week. **Senator Coiner** asked if Maine had something similar to RX Idaho that they could utilize. **Mr. Bruno** said that in his thirty years of experience as a pharmacist, he had never seen anyone qualify for a pharmaceutical assisted program.

Senator Darrington said that the Maine RX program had saved money in the medicaid program in the state of Maine and that it has also been a contributor to some rural pharmacies going out of business. **Mr. Bruno** replied that the medicaid drug budget had gone flat and actually decreased even though there were 320,000 in the medicaid program. [Maine has one out of four on medicaid; Idaho has one out of seven.] Some that went out of business was because of the reduction in the medicaid drug budget. **Senator Darrington** asked if it was possible to work out this kind of program with the support of the pharmacies and industries? **Mr. Bruno** said it passed overwhelmingly in spite of the criticism. Hawaii has also passed this bill.

Senator Broadsword asked how much and who pays for the outlay of money for publicity? **Mr. Bruno** replied that it was a general fund appropriation and it was $150,000. **Senator Broadsword** followed with concern that this program would cost the Health and Welfare Department money and manpower hours. **Mr. Bruno** said there were no extra fees to run this program. **Senator Coiner** asked if one-third of the pharmacists where a part of the Maine RX and was he one of those pharmacists. **Mr. Bruno** said he was not. Before the cut in the reimbursement rate, he was as were 75% of the pharmacists.

Senator Kelly asked why the chain stores didn't participate in the program? **Mr. Bruno** said it was in retaliation to the reimbursement cut. **Senator Compton** said that since the medicaid rate and the Maine RX

rate was the same, why would pharmacists only handle the medicaid customers and not participate in the Maine RX plan**. Senator Kelly** said that in smaller communities where the pharmacist chooses not to participate, the people in that service area either won't have access to the program or will have to drive to some place where it is offered. **Mr. Bruno** said that is why the department has come forward with a fund of three million dollars to start paying pharmacies to make up the difference between what was cut out of the medicaid reimbursement rate and the Maine RX Program. The department is reimbursing those rural pharmacies to keep them in the program.

Karyl Yelverton, citizen from Rupert. At 59, she lost her job at J.R. Simplot Company and she is living on $500+, which is her pension from Simplot. She is not yet old enough to receive social security and her medication is $300/month. She doesn't own her home and has no insurance. She did not know about RX Idaho.

Jim Alexander, pharmacist from Mountain Home. He showed six cards that one person had where they pay a co-pay or nothing at all. He wondered why someone would want to go with the Affordable RX plan. He was also concerned about the lag time that was mentioned earlier. There are many other costs that are hitting the state of Idaho. He suggested that time be spent on an actuarial process to weigh the benefits against the costs. His concern is the long-term view of this program where rates may be lowered in the future. The medicare program that started up a year ago will be implemented in 2006. That program pays up to 80% of the cost of medication to a certain level, then pays full price for awhile, then back to the discounted rate. That program, to his understanding, would be a far better program than what is being proposed today. He would like to see how the 2006 program would work before jumping into something else. Another complicating factor is that the federal government would no longer negotiate for the best price or discounts on prescription drugs.

Kent Jensen, pharmacist from Twin Falls. He served on the Idaho Medicaid Drug Utilization Review Board for eight years. He is concerned about the RFP that will go out in 2008 and that it will prove to be more costly. If this program is enacted, the administrative costs will be higher. In his pharmacy he has five program booklets to help customers find the right program if they fall within the particular guidelines.

Tonya McCommas, citizen and Native American from Sandpoint. She suffers from rheumatoid arthritis, fibromyalgia, and lupus. She is unable to function on a daily basis without severe pain. Her husband has several jobs to support the family. They do not have insurance. The cost of the medicine is unreasonable. Prescriptions cost $670, $210, $98, $300, $100, and $120 for one month. She cannot work. She asked to make medications more reasonable and asked that they support this program. **Senator McGee** asked if she was familiar with RX Idaho or any of the other programs that the pharmacists mentioned. **Ms. McCommas** said that it takes time to sign up for one medication and sometimes they don't work and her doctor switches to something else. She has been through

nine different types of anti-inflammatory. On further questioning, she only knew of insurance discount plans. She had not tried the other programs mentioned by the pharmacists. She does not own her home.

Scott Sigman, Government Affairs Manager for the Pacific Northwest for Shearing Plowe Corporation and from the state of Washington. He explained that the pharmaceutical industry was reaching out to those that were uninsured or under insured. He said it was mentioned how difficult it was to access the low cost or no-cost programs, but in 2002 Shearing Plows gave one million dollars to 500 Idahoans, Johnson & Johnson gave more than 1.8 million dollars to the citizens of Idaho. In 2002, 52,000 people participated in the various PhARMA assistance programs. His program provides free drugs to people that are at 300% of the poverty level. No co-pays, no cards, no deductible is required. There are solutions, but this program that is before the committee today will create more confusion. They brought the program, Idaho RX.org to the state of Idaho less than a year ago in order to meet the needs of individuals. To date, 5,000 people have qualified and are participating in the Idaho program. They launched a program in Washington state recently and 52,000 people have already qualified to receive low-cost drugs. There are a number of sponsors that are on the Idaho RX web site. In March, on its first anniversary, there will be an advertising effort with promotional material and public service announcements. PhARMA will be launching a national program that will be heavily marketed in April. He doesn't see this program as a collaborative effort.

Jeff Buell, Director State Government Affairs of Johnson & Johnson, representing Together Rx™ Access Card. This program is a combination of 15 pharmaceutical manufacturers and it provides prescription drugs from 25 to 40% and is entirely free. This program will also be linked to the 2-1-1 number or to the Idaho RX web site. In the two weeks since this program was launched, there have been 100,000 people who have made inquiries. He said they have sent out 51,000 applications and have completed 47,000 applications. This program is for uninsured and for people that are working, but cannot afford health insurance. Other key points are that it is easy to enroll, and it does not take 60 days. You can enroll on the web site, phone in, or send in a mail-in application. (See Attachment #3)

Senator Compton said that S 1089 would be held in committee and discussed further on Monday, February 14.

ADJOURN: The meeting was adjourned at 5:00 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, February 14, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Senator Compton called the meeting to order at 3:05 p.m.
GUESTS:	See attached sign-in list.
MINUTES:	A motion was made by **Senator Coiner** that the minutes of Tuesday, January 18, 2005 be approved as written. The motion was seconded by **Senator Kelly** and the motion was **carried by a voice vote**.
MINUTES:	A motion was made by **Senator Kelly** that the minutes of Monday, February 7, 2005 be approved as written. The motion was seconded by **Senator Brandt** and the motion was **carried by a voice vote**.
RS 14970	Stating Legislative Findings and Authorizing the Legislative Council to Create A Committee to Study The Prevalence Of Cervical Cancer - Sponsored by Senator Broadsword
RS 14761C1	Relating to Medical Assistance; Amending Chapter 2, Title 56 Idaho Code - Sponsored by Kelly Buckland
RS 14871	Stating Findings of the Legislature and Rejecting Certain Rules of the Department of Health and Welfare Governing Indoor Smoking - Sponsored by Senator Brandt
RS 14987	To the Senate and House of Representatives of the United States in Congress Assembled, and to Congressional Delegation Representing the State of Idaho in the Congress of the United States - Sponsored by Senator Brandt
RS 14978	Relating to the Treasure Valley Air Quality Council and Other Regional Air Quality Councils - Sponsored by Senator Langhorst
RS 14877	Relating to Peer Procedures for Skilled Nursing Facilities - Sponsored by Robert Vande Mervwe
RS 14904	Relating to Family Planning - Sponsored by Senator Keough
MOTION:	A motion was made by **Senator Brandt** to send to print RS 14970, RS 14761C1, RS 14871, RS 14987, RS 14978, RS 14877, RS 14904. The motion was seconded by **Senator Werk**, and the motion was **carried by**

a voice vote.

S 1089 **Continuation of Hearing from Thursday, February 10** - Relating to the Idaho Prescription Program - Presented by **Steve Tobiason**.

Senator Compton called on **JoAn Condie**, Director of Idaho State Pharmacy Association.
She testified on behalf of 489 of 490 members that asked for a no vote on Senate Bill 1089. She said there were no pharmacists here today because Monday is their busiest day in the store and the state of Idaho has a shortage of pharmacists. Before and during the 2004 legislative session, ISPA representatives did meet numerous times with the AARP representatives. ISPA representatives requested changes in language in the 2004 legislation which were granted and incorporated at that time. The 2005 legislation does not include ISPA's requested language because of the changes of premium. While the ISPA representatives were never totally thrilled with this legislation or another discount card program, they were willing to work with AARP in 2004 to provide some relief to the uninsured Idahoans. Even though AARP continued to believe that pharmacists would be "made whole," ISPA knew that the discounted price would adversely affect, once again, only the pharmacy providers.

AARP states that pharmacies will receive the current medicaid reimbursement rate (AWP - 12 + 4.94) "making them whole." According to Ms. Condie, this was not an accurate statement. ISPA has been working with the Department of Health and Welfare since the early 1990s, offering suggestions on ways to save the taxpayers of Idaho prescription drug costs. The pharmacies in Idaho have not realized an increase in reimbursement since, I believe, 1989; in fact, the reimbursement has been lowered at different times over the years, never increased. In 1999, the reimbursement rate went from AWP + 4.94 to AWP - 11% + $4.94. Around 2001or 2002, the reimbursement went down another per cent to AWP - 12% + $4.94. In June of 2004, the department began reducing payments through what is known as the State Maximum Allowable Program or SMAP. While the dispensing fee has not been adjusted, the reimbursement for the cost of the drugs, which pharmacies have no control over manufacturer's drug pricing, has been reduced significantly. Experiencing the SMAP reimbursement cuts caused the representatives of ISPA to reevaluate the AARP program, which is based on the current medicaid reimbursement rates.

Ms. Condie said that one of the women that testified last week had not attempted to get assistance from the current assistance programs. The other woman, who was a Native American did get two of her medications from the Indian Health Service. PhARMA and the Governor's office announced the RX Idaho web site during the 2004 session. There are other avenues available to Idaho's uninsured that should be marketed and utilized before another program is recommended that cost the participants, the taxpayers, and the pharmacies of Idaho. The success of the AARP program is based on "if" the uninsured Idahoans are willing to pay the $10-$15 dollar drug card cost. She requested that the committee vote no on this bill.

Senator Compton called on **Mr. Bill Roden**, representing PhARMA, to testify. He explained that he would not repeat testimony from last week, but would like to raise some issues about the bill itself.

He pointed out that over the last several months, there were discussions with AARP representatives concerning this legislation. In December of last year, when they met in the Governor's office on behalf of my client, our concern was not the fact that they wanted a program, our concern was trying to tie this program to the medicaid program because of the severe restrictions in the federal social security act, Title 19, on that kind of arrangement which can cast doubt upon the program and can affect reimbursement rates. He pointed out that the last decision in the Maine case was whether or not Maine would tie prior authorization to the medicaid program depending on what the pharmaceutical companies did in the Maine RX program. The court decided that the case was not right for disposition because Maine had not yet imposed any prior authorization and had in fact indicated to the court that they would not. That question was left open by the court dependent on future actions in the state of Maine with reference to further activities that would link the two together.

He commented on the first phase of this legislation that begins January 1, 2007 and the effective date of this legislation is July 1, 2007. That is unclear. The second phase will begin July 1, 2007, and as he understands it, the second phase is the institution of the secondary discount program which by the terms of the bill is on page 3, lines 3 - 10, beginning January 1, 2008. The bill goes into effect July 1, 2007. Assuming that it is intended to take six months to implement the program, those up-front costs will not be covered by the appropriation. The department will be working on the bill commencing on July 1, 2005 and the first implementation date listed in the Statement of Purpose is January 1, 2007. There is a fiscal impact note costing a certain amount of money and yet the discount card may not go into effect until January 1, 2007.

He went on to discuss definitions. The first definition is average wholesale price (AWP). He pointed out that the AWP was not set by the drug manufacturers. The pharmaceutical companies report to a pricing establishment and they determine the AWP. Next he discussed the definition of covered drugs. There are many drugs that require prior authorization. In Idaho there is nothing in statute or rule that refers to an enhanced prior authorization program. The public will think that all drugs will be covered that are in the medicaid program, not on a prior authorization, not on a preferred drug list. All of the drugs in the medicaid program do have rebates that are provided by manufacturers based on the average wholesale price minus 12% plus the dispensing fee. This legislation should say that all drugs are authorized by the medicaid program, or else you would be severely restricting the drugs.

Originally the thought was that the manufacturer would negotiate the initial discount price, if that is the intent of the legislation. If it is intended that before the drug manufacturer can participate he will automatically agree to pay the medicaid rebate, then there is no negotiation and it is not a voluntary program. If, on the other hand, it means that they will be

negotiated, the problem is that in Section 56.14.04 the initial discounted price will be the medicaid price. These are not new issues and they have been raised before. He mentioned that in Maine, they put out a good brochure for the customers. He described the brochure by section: (1) "Low Cost Drugs for the Elderly and Disabled," a section under a Medicaid program; (2) the Maine RX Program; (3) the Drug Company Patient Assistance Program with directions of where to apply for those. These programs are available and the brochure points out the savings and the differences in the programs so everyone can judge what is best for them.

He suggested that everyone read this bill carefully before they vote so they know what these various provisions mean.

Senator Compton asked if everyone could get together and come up with something that would work for the good of all.

Pam Eaton, President of Retailers Association.
She represented the pharmacists. Mail order for drugs will take away from Idaho pharmacists. Other programs are available to a higher percentage of poverty level and also provides deeper discounts. Some times the medication would be free. The problem is that not very many people are aware of this. She said a national program that is going on has been getting a lot of press and more people will be learning about it. Several stories about this program were on national news this week end. The Governor plans to roll out a campaign on RX Idaho on its anniversary in March of this year. She feels we should give those programs a chance before we throw another one into the mix, especially one that has some concerns and problems.

The senators had some discussion and wondered if a compromise could be met between the stakeholders.

Dr. Will Rainford, Legislative Liaison for Catholic Charities. He explained that he was representing Bishop Michael Driscoll's position in the matter of S 1089. He explained that Bishop Driscoll urges you to support the Idaho Prescription Drug Program. As you have heard, more than 250,000 Idahoans, many of whom work, are without medical insurance. Lives are at stake. Children are at stake. They need your intervention. They need your protection.

He went on..."We have heard stories of medically fragile children whose parents must make awful choices between paying the heating bill or paying for expensive but lifesaving medication; of splitting medications or skipping doses so the prescription will last longer. Some families skip meals or eat meager sustenance, just so they can afford medication. These are not choices families with medical insurance must make. There is no justice in a system that casts these children into medical "illfare."

We are familiar with the condition of poverty. We know that a child who is medically at risk and who cannot obtain the necessary medication will unlikely grow to be a healthy, productive adult. It is intolerable to us that

many of our children will not get medical treatment, including prescription medications, just by virtue of having been born into an impoverished. Family. You are the stewards of our state. You are the first line of defense for our children. We call on you to act justly, act paternally, act wisely. Vote Yes on SB 1089."

Joe Gallegos, Associate State Director for AARP Idaho.
He said that the question today is whether S1089 will hurt your constituents or help them, whether or not it will provide solutions to the growing problem of taking care of Idaho's uninsured population. The pharmacists are concerned that S 1089 will hurt their profit margin and possibly put them out of business. The committee heard from an Idaho pharmacist who stated that the current rate of compensation was pretty good and history will show that the medicaid rate has not put any Idaho pharmacists out of business. S 1089 will allow for Idaho pharmacists to earn the same profit margin that medicaid provides for them. The Committee also heard from Joe Bruno, a pharmacist and legislator who voted for similar legislation in Maine. He said that when the bill was enacted in Maine that 70 - 80% of Maine pharmacists joined the program. After the dispensing fee was reduced by Medicaid, they then chose to get out of the program. They are considering bringing compensation to bring them back to the old rate and many pharmacists would then join the program. They voluntarily entered the program and they voluntarily left the program. The committee also heard from manufacturers and their assistance programs to help the uninsured. There is no reason why RX Idaho cannot co-exist with those programs so the citizens would have the option to choose which was best for them. Affordable RX Idaho allows for Idaho to negotiate for better prices.

He went on to say that AARP's investment in this program is to see affordable medications available to our population. AARP is committed to an extensive and far-reaching campaign if this bill passes. **Senator Coiner** mentioned that this program doesn't start until 2008 and yet there are currently other programs available such as RX Idaho. **Mr. Gallegos** said they were not asked to do that, but they have received calls from people and have pointed them to the current programs**. Senator Coiner** again asked Mr. Gallegos why they couldn't work more on what was available now rather than what was to be implemented in 2008, which would require additional state people and monies. **Mr. Gallegos** replied that the reasons to stage the implementation as to have time to recruit pharmacists, to negotiate for the rebates. There is also the issue of the when the Department of Health and Welfare will get the new computer program up and running. He asked that the committee determine that it is good public policy. He said they would help in publicizing other available programs to the community.

Senator Compton referred to Mr. Roden's comment that there were some flaws in the bill and that it could be improved. **Mr. Gallegos** felt that they had made many of the changes that were requested, but made note of that. He said that the savings that would be realized by our community when they utilize the RX Idaho program and Together Access program and the savings and discounts will differ depending on which pharmacy

they go to. Affordable RX Idaho will provide for a consistency on the kind of discount that the consumer will realize. Also the reimbursement rate, the dispensing fee, the profit margin is better for the pharmacists under the current medicaid program than under the RX Idaho or the Together Access Program. He ended his comments with a request to pass on this bill.

Senator Werk asked a question of Ms. Condie. If the pharmacists were really concerned, the biggest threat would come from these programs. **Ms. Condie** said that since they have not been marketed so much, pharmacists don't know. However, in the past, pharmacists have been helping those that they know need help with their prescriptions.

Senator Darrington asked Mr. Gallegos about his remark that he had complied with Mr. Roden's requests and yet Mr. Roden stated in his testimony that they had not. **Mr. Gallegos** said that Mr. Roden had said that it needed re-work. **Senator Broadsword** said that Mr. Roden pointed out that the reimbursement says in the bill it will be weekly or bi-weekly and that the drug companies only reimburse quarterly. She asked where the money would come from to pay out weekly. **Mr. Gallegos** said it would come from the medicaid funds, the established rebate program. In the initial phase of the program, there will be no reimbursement to the pharmacists. The pharmacists will be providing that prescription medication to the consumer at the current medicaid discount rate. The secondary phase of the program is where there will be negotiations for supplemental rebates and where the additional savings will kick in.

Senator Compton called upon **David Rogers** to comment. **Mr. Rogers** had no specific comments. **Senator Broadsword** asked Mr. Rogers if this would be a burden to the department. She has heard back from pharmacists that the department is not getting back to them as quickly as they would like. Mr. Rogers said that beyond being supportive of the concept, their issue has been the fiscal impact in trying to make sure the costs were covered. If the legislation provides an appropriate level of staffing to the department there would be no issue, but that is contingent on resources being available to do those things are required. He estimated that there would be a need for an additional staff of eight and the cost for staffing is not in the budget at this time.

Senator Compton asked Mr. Rogers if he envisioned that a new system would have the capacity to handle the implementation of this program. **Mr. Rogers** said the new system would be more flexible in allowing different benefit package designs so there could be a population incorporated in the system that only had a pharmacy benefit. The claims processing side is different. He said they would know more when they received the RFP's. **Senator Compton** asked the date of implementation. **Mr. Rogers** said January, 2008 was the target date, based on issuing a request of proposals within the next couple of months. It would be a certified medicaid management information system.

MOTION: A motion was made by **Senator Brandt** to hold S 1089 until time certain or until the call of the Chair. The motion was seconded by **Senator**

Coiner and the motion was **carried by a voice vote**.

Senator Compton has called for the groups involved to come back to the committee on Thursday, February 24 for further discussion.

ADJOURN: The meeting was adjourned at 4:32 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Tuesday, February 15, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator Keough
CONVENED:	The meeting was called to order at 3:05 p.m.
GUESTS:	See attached sign-in list

Greg Kunz, Acting Administrator, Division of Welfare and **Kandee Yearsley,** Department of Health and Welfare.
To speak on The Child Support System (Testimony follows)

The Child Support Program promotes the physical and economic health of families by ensuring parents follow through on their financial responsibility for their children. The program provides services that include paternity testing, establishing and enforcing court ordered financial and medical support, and locate services. Child Support works closely with TANF, Food Stamps and Medicaid programs to ensure all single parent families applying for these services also receive child support services.

Let me first provide a few facts about the Child Support Program. There are two types of child support cases: the first type is a “full service case”…this is created by a specific application to child support or when the customer must participate with child support because they are receiving state assistance. The second type of case is the “receipting service only” case where the state is responsible to receipt and distribute money and to maintain a payment record of the money received.

Define: NCP=Non custodial parent; CP=Custodial parent

In SFY 2004, the Child Support Program:

- was responsible for over 93,000 “full service” cases and collected $118.6 million
- was responsible for over 18,000 “receipting service only” cases collecting $36.6M
- collected over $155M in child support from more than 110,000 cases

At the end of FFY 2004, Idaho’s child support arrears balance (sometimes called the arrears debt) was $393M. The arrears debt increases at a rate of almost $20M every year.

It is estimated that about 1/3rd of the child support's "full service" cases receive payments regularly without vigorous work. The other 2/3 requires vigorous case work and enforcement activity to collect child support.

It is important to point out that the role of the Child Support Program is to establish and enforce court ordered support using available enforcement tools. The Child Support Program has to refer cases to court for modification of the order, for contempt actions or any other legal issues. Child Support does not have the legal authority to make any changes to an order. It must be done through the court. This is an area that is not well understood. An analogy could be made to a DUI.

Senator Compton said he attended a seminar on Child Support and there was going to be a proposal brought forward with some legislation to enable the department to make administrative changes without going to the magistrate. **Mr. Kunz** replied that they were interested in doing that. The idea that the state would have an administrative process to allow or give to the state and the appropriate agency or department the authority to act in accordance with guidelines on child support orders and modifications. Many states have moved to that administrative procedure. **Senator Darrington** commented that he remembered when the guidelines were put with the Supreme Court and made a judicial process. He questioned how the three-year review was doing. **Ms. Yearsley** spoke up that they were keeping up with the three year reviews and were consistent on all cases that were in the system. **Senator Darrington** said it might be okay to pursue the course outlined by the Chairman, but we should be careful to leave the guidelines with the Supreme Court. Everybody in the system is, exactly 50%, either hurt or helped by however the guidelines come out. **Senator Werk** commented that he was amazed of the number of child support orders he had heard of a case where the non-custodial parent would go to another state or was working under the table. We now have a judicial system regarding child support order so that any time you want to make a change, you must go to the courts. So someone in the court has to decide that what they want to do is important enough to get on the docket, which might take as long as three months. The judiciary system is already clogged up and yet we seem to want the judiciary system to maintain some piece of this. **Senator Darrington** said that politically, we, as a committee of legislature cannot set the guidelines without being bombarded by hundreds of people. It has to get into a non partisan objective arena and that is why the court has to set the guidelines. **Ms. Yearsley** said it used to be that the guidelines were set by the legislature and part of statute and reviewed every year, or two years, or three years. She believed that they had to be reviewed every seven years. The legislature wanted out of that business. They never had an administrative process around court orders. They did have the legislature determining the guidelines of how those court orders were established. The guidelines are the formula that determines how much is paid for child support. In Idaho, when that came out of the legislature, it became part of the supreme court. In Idaho, it is a social service entity and under the department of health and welfare, not a legal entity. The mind set in Idaho is that no one can know the law like the judicial system.

Senator Compton asked what happens when a magistrate has the file and sets who pays what. If a change comes about, how would it ideally be handled. **Ms. Yearsley** replied that the child support is determined in court and the case comes to the department and is put on their system. When a change is wanted and a modification is needed, the case has to be referred back to court, get back on the court calendar. After both parties are served, they must appear before the magistrate. The barrier is that if people are behind in their child support, they are in contempt of their court order and the judge will not hear those cases in every jurisdiction throughout the state. Attorneys will be sanctioned if they take those contempt cases into court to try and get a modification done. **Senator Brandt** cited a case regarding an outfitter, or an engineer, who had a business license, and had fallen behind in payments. He loses his job and gets more behind and then his license is taken away. With the loss of his professional license, a giant spiral begins and he can never recover. **Senator Darrington** said that was the reason why this law was written in 1988 or 1989. It was either the Federal Welfare Reform Act or Budget Reconciliation Act and we had to change the law and write it the way we did. **Ms. Yearsley** said that their job was to create an environment where the person can be successful and fulfill their obligations, but it can be difficult because both parents want what they want and we are dealing with both sides. Senator Compton asked for a description of how you would want to handle these administrative cases. Ms. Yearsley gave this scenario: You come into the department and we set up an administrative order for you, not a court order (in some states it is filed with the court, some states do not). A couple says they are divorced and one of them needs to pay child support. Then we would run the guidelines, using the guidelines calculator, and determine how much needed to be paid, by whichever party. That's the amount that is determined and that would be written up in what is considered an administrative order. That order would be signed off by both the custodial parent and the non-custodial parent and the department. Then that order would be taken over to the judiciary and filed with the court, which would make it a legal and binding document. At that point, even though it is filed with the court, it is still an administrative order. A year later, the non-custodial parent comes in and says he lost his job. We have the ability to re-run the calculation and change the child support from $250/month to $150/month, on the condition that both parties agree.

The committee continued to discuss the judiciary responsibility versus administrative guidelines processed by the Department of Health and Welfare.

Interstate cases

Interstate cases are another part of Idaho's child support work. Some child support cases come from other states. Just like Idaho depends on other states to work Idaho cases when the non-custodial parent lives in that state, Idaho works cases for other states. This is part of the national Child Support Program which operates under federal statute. The Federal Uniform Interstate Family Support Act directs how states work with each other. Approximately 25% of Idaho's child support cases are interstate cases.

- These are cases where the non-custodial parent resides in another state and we rely on that state to use their enforcement methods to collect child support on behalf of the custodial parent and child residing in Idaho.
- This also includes cases where Idaho provides the service for other states when the non-custodial parent resides in Idaho and the custodial parent and child reside in another state.

Senator Broadsword asked if there was any movement to make the interstate agencies work together, like the same program across the nation so there are no complexities. **Mr. Kunz** said that the national system provides some standardization and there is a constant effort to improve those standard processes, but it is a fairly complex process. Each state is very protective about the way their program works.

Funding based on Performance
Child Support is one of the few programs within the State where the program performance determines a portion of its funding. In 2004, approximately 10% of the program's funding was based on 2003 program performance. He said Idaho was about in the mid range of the states performance. 2.6 million dollars is what Idaho received as part of the child support funding base. That goes into the actual program funding. If we do not perform well, we would actually lose federal funding.

Current Activities
Financial Institution Data Match (FIDM) is an enforcement tool that allows financial institutions to provide information of monies in accounts of non-custodial parents with unpaid child support.
- From 1998 to November 2004, Idaho had not found Financial Institution Data Match to be an effective enforcement tool as the program used a time-consuming garnishment process. Child Support had only collected approximately $1800 total during that time period.
- Last session, the Legislature approved an administrative process. In December 2004, the Child Support Program began using the administrative process, and Child Support has collected in excess of $75,000 in two months and we see potential for continued success using this process.

Online Payments
- In October 2004 Child Support began accepting payments online as another option for non custodial parents. Currently, payments received online are in excess of $100,000 per month. These payments are from both individuals who don't make regular payments and individuals who use it as a convenient way to make their monthly payments.

Contract Services are an Important Tool for the Idaho Child Support Program
In order to be as effective as possible with the size of Idaho's Child Support Program, we contract some services to provide the best service delivery possible. Some of the contracted services are:

- Legal Services- To establish paternity orders, financial and medical support orders, and to modify existing orders through the courts. These services are contracted with and through the Attorney General's office.

- Paternity Testing- Provide genetic testing for paternity orders. These services are contracted with a company called Reliagene. The non-custodial parent pays the cost for this service.

- Mail processing- Processing for outgoing mail. This service is contracted with Auto-Sort.

- New-Hire reporting- Provides electronic matches through a national data system when non custodial parents begin new jobs. It reports the data within 20 days of the hire date. This service is contracted with the Department of Labor.

- Work Readiness and Training- Provides training, guidance and other services to non-custodial parents to increase their ability to meet their financial and medical support obligations. This service is contracted through TANF contractors statewide.

- One contractor provides a number of child support services. Policy Studies Incorporated (PSI) provides the Child Support 800-customer service line, receipting services for all payments made by mail, and a financial audit (account accuracy) unit to audit child support financial records. They are currently auditing approximately 400 financial records per month.

Enforcement Processes

Child Support uses a variety of methods to collect court ordered support. The current enforcement tools which are typically used are:

- Wage Withholding which accounts for over 50% of total collections
- Interstate enforcement
- Tax Offsets-including federal and state taxes
- Unemployment benefit offset
- Retirement offsets, lottery winnings, garnishments and voluntary payments

In situations of last resort, when there had been no payment for 90 days or the non-custodial parent owes in excess of 3 months or $2000 in support:

- Liens
- License Suspension
- Financial Institution Data Match

Issues/Barriers

- Staffing
    - The Child Support Program currently has 136 FTE. The FTE has been declining since 2001 when there were 189 FTE.
- Caseload Increases
    - The Child Support Program's caseload increase is approximately 10% annually over the past two years

(reference handout).

- Financial account accuracy-
  - Child Support maintains financial records on 75,000 of its full service cases (the balance of the 93,000 cases are waiting for an order to be established). A legislative audit reported that child support accounts were not accurate. Staff were not able to keep up with the caseload growth, and the result: 3 out of 4 cases had inaccurate account balances.
  - From a compliance perspective this is a problem, but from the perspective of a family or individual paying or receiving child support it is unacceptable.
  - Staff worked diligently to improve the account accuracy. A contractor now reviews approximately 400 case financial records each month, correcting and adjusting balances…we target cases involving license suspension, Financial Institution Data Match, or other aggressive enforcement activity. It is critical that accounts are accurate when these actions are taken.
  - This is a national problem…Idaho is not the only state.

Senator Broadsword asked if there were income tax (federal and state) attachments for non custodial parents. **Mr. Kunz** said that was one of the enforcement tools available and there is a $25 charge for intercepting the tax refund - that is a federal requirement.

Future Plans

- Administrative modification of support orders. Currently we have a judicial process. An administrative process would allow Child Support to expedite the modification process on cases where there has been a substantial change in circumstance. This would allow Child Support to be pro-active in getting the correct amount of support ordered.
- Statewide standardization of child support activities to create process improvements in customer service. This removes the regional variations and establishes statewide standards for the program, providing improved customer service.
- Recodification of child support statutes making Idaho code more efficient.
- Increased focus on medical support activities as in the future this will become a national measurement for the success of Idaho's Child Support Program. By focusing now, it will provide a greater ability for success as medical support becomes a performance measure.

Senator Compton asked what kind of help was needed from this committee to understand the priorities for collecting child support. **Mr. Kunz** replied that the most critical need right now are trained competent staff to do the work. There are cases waiting to be worked. There are child support dollars that could be paid that are not being paid because we can't provide the attention and put forth the effort to make that happen. Part of why child support is in the position that it is today has to do with the budget hold-backs and the difficult economic times during the last couple of years.

Senator Broadsword asked if there were any states that had changed the rules, charged a 5% handling fee to cover the FTP to collect the child support. **Ms. Yearsley** replied that there were states that charged a handling fee for the monies and the state of Idaho has done so in the past, but with the 66% match rate, when you collect dollars, if you charge a handling fee and you are paying that 66% of that handling fee - in order to make that a functional process, it is so expensive for the customer and when you want to keep the customer in line and the fact that the custodial parent is usually the one that picks of that handling fee, that's the reason Idaho has not ventured into that area.

Mr. Kunz said that one of the things he didn't stress was that Idaho made a decision in designing this child support program that Idaho would provide its social services programs and that is why the caseloads are as high as they are. Many of the individuals who are receiving child support services are individuals who are already struggling and are on food stamps. When child support works and child support is collected and provided to a family that is often one of the factors that can keep that family off of welfare and out of the health and welfare office to get some of their basic needs met.

Mr. Kunz finalized his presentation by saying that he began as an eligibility examiner for the department of health and welfare. He doesn't think that people that come in for services really want to be there. They have real needs and are struggling, they have kids that are struggling, they have relationships that are struggling. The circumstances around welfare and services are sometimes misunderstood. He thinks the system works quite well and they have minimized the number of staff needed. He estimates that 38 positions were saved because the staff was not going through a lot of administrative processes. Studies show that the individuals on our systems are eligible and not making false systems. There is not enough staff to do the policy the way we have described the policy to be done. That's where mistakes are occurring.

MINUTES: A motion was made by **Senator McGee** that the minutes of Tuesday, February 8 be approved as written. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Coiner** that the minutes of Wednesday, February 9 be approved as written. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:30 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Wednesday, February 16, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Senator Compton called the meeting to order at 3:03 p.m.
GUESTS:	See attached sign-in list.

S1105 Relating to Care for the Medically Indigent; Amending Section 31-3501, Idaho Code, To State Policy to Provide Care to Persons who are United States Citizens or Legal Residents - Presented by **Dan Chadwick**, Executive Director of the Idaho Association of Counties.

When he presented this bill for a print hearing, the point addressed was who pays for indigent health care in this state. The main issue being addressed in S1105, is who pays. He explained that we were struggling with limited resources in this state in our ability to address health care. County government has a responsibility to provide for indigent health care at the basic level. The state then picks up the additional care through the catastrophic health care cost program. The questions is where should the burden fall - should it fall on the property taxpayer, should it fall on the general taxpayer at the state level, or should it fall somewhere else. It is a question of responsibility, both public and personal.

A brief summary of the bill is as follows:
Section 1, page 1, lines 20 through 22 - deals with the issue of policy for the state of Idaho in regard to indigent health care. This policy issue deals with the question is of personal responsibility. There are other instances when we have to take care of people when they are suffering catastrophic health care claims and they don't have the resources to pay for it. We ask that the statement of policy be clarified to indicate that in those circumstances where we are dealing with non-residents who do not have legal status in this state or the United States, that the responsibility not fall on the property taxpayer.

Section 2 - The definition of resident is clarified and specifically acknowledges those who are not legally present in the United States. It does not include persons who are not US citizens, or do not otherwise

have legal status. It puts those individuals in the same position that we have put those individuals that are in the state of Idaho that are seasonal laborers, vacationers, and those seeking an education. We do not provide any indigent health care for those individuals in this state. We provide an exception to that within the context of this statute.

Section 3, page 3, lines 51 through 53, and page 4, lines 1 through 8 - This clarifies that counties are obligated to pay for emergency services for illegal immigrants with counties obligated up to the first $5,000, and then the catastrophic health care cost program picks up the remaining balance of those particular claims. In this context, the language talks about the responsibility exists to the point of stabilization determined by the medical providers. In addition, the counties will assist in the cost of transportation when necessary to transport the individual to their home or place of residence.

Section 4 - This discusses reimbursement tied into the policy of personal responsibility as it relates to employers. If an employer has knowingly hired an employee in violation of Idaho law, that employer should assume some responsibility. This would create a cause of action for those individuals so the health care provider, the state or the county to seek reimbursement for those individuals that we have provided the catastrophic health care for.

The financial impact is somewhere between 1.5 to 2.0 million dollars as an annualized cost. This is a question of responsibility. Emergency care is provided for those who need the emergency care.

Mr. Chadwick recommended that this committee send S1105 to the floor with a do pass recommendation.

Lucy DeLora, Caldwell, Idaho Community Action Network - opposes this bill.

Ms. DeLora says the counties are correct, the program is not working and health care has become expensive. It is not working for the 42% who are denied access through the approval system which has no qualification guidelines, and it is not working for those accepted by the program only to find that they are in medical debt when the county places a lien on their property. The counties are also correct in stating that the immigration system is broken. Every year we are asked to turn a blind eye as thousands of immigrants searching for a better life are refused in the US industry and exploited on the job. This bill will not fix these problems. It does not break the cycle of out-of-control health care costs, it only shifts the cost to hospitals, which are then passed on to the public. This bill does not stop employers from hiring undocumented workers and it does nothing to remove the barriers of censorship.

There seems to be a misconception of the number of immigrants accessing the indigent fund. In 2003, reported by BSU (See Attachment # 1) and in cooperation with 39 counties, it was found that 96% of those using the county indigent fund were US citizens or non-citizens with

papers. Only 2.8% applying for the program were undocumented and of those the big majority were living and paying taxes in the United States for more than five years. The report also shows the that the average cost of cases paid by the county fund was $6,494 in 2001. When you also include cases that were strictly for prescription drugs, the average expenses drops $3,705. The average cost to many counties was even lower. For example, in Kootenai County, the average cost was only $1,181. She asks that the committee vote no on S1105.

Jack Fisher, on behalf of Corrine Tafoya-Fisher, and the Action Against Hate Committee - opposes this bill.

He opposes S1105 and feels that it targets the people who have been the backbone of our agriculture economy for many years. Mexicans were invited here when they were desperately needed. He believes they are currently flooding our country in response to labor policies that have caused unprecedented poverty in their countries. He believes this bill targets Mexicans and is morally wrong. (See Attachment #2 for complete testimony)

Robert Vasquez, District 1 Canyon County Commissioner - supports the bill.

He explained that this bill is not about emotion, not about racism, not about color - just money. It is not about a work ethic, not about doing the best for one's family, and not about discrimination. This is addressed to anyone who is in this country illegally applying for medical services. It is not about bigotry, not about paying taxes, as some have submitted a social security number that has proven to be false. That is where an employer has hired an individual believing that his documentation is legal, that employer would not be subject to the provision in this bill.

This bill is about stabilizing and repatriating those individuals to their country of origin. It's about serving our constituents and about enforcing the law and it is about the health and safety in the public in Canyon County and throughout the state of Idaho. It is about a fiduciary responsibility, at the state level and at the county level and it is about reducing those costs to the best of our ability while enforcing the law as equitably as possible. It is fair and equitable imposition of the rules and regulations as we perceive them. We ask that this law be changed so that we can fairly and equitable impose these regulations so that it serves our constituents, our American citizens without diverting those funds to those in this country illegally. It is about defending our state sovereignty, it is about foreign nations expecting Idahoans to provide jobs and health care to their citizens who have crossed illegally into the United States and into Idaho.

There is a compilation of our illegal alien cases that have applied for welfare from October, 2002 to February, 2005 and it indicates an increase in the indigent medical welfare applications of illegal aliens from 0 to 25. Some have been paid from the catastrophic fund while the county had denied that claim. He mentioned that he had recently received four

applications from illegal aliens, one was not from Mexico, but another country. He also gave testimony of one particular individual who suffered from a brain injury and was released to St. Alphonsus to be returned to his home in Guadalajara.

Matt Beebe, Chairman of Canyon County Board of Commissioners - supports the bill.

He explained that these illegal alien applications for medical benefits greatly impact the catastrophic health care costs program. In 2004, the catastrophic program paid out approximately 14.4 million dollars and the 44 counties paid out an additional 13.3 million dollars for a total cost of just under 28 million dollars. In Canyon County over the past six years, we have received 196 applications from illegal aliens out of a total of 6,396 applications. 3% of total applications were from illegal aliens. 53 of those were paid out and the county share was $289,000 and the catastrophic health care program paid an additional 1.1 million dollars. Canyon County recently received an application from an illegal involved in a car accident. His bills thus far are $173,600 and is unresolved at this time. Another case of an illegal alien, injured in a gun fight, and the bill for his medical expenses were $363,283. These examples are presented to show the fiscal impact the medical expenses of illegal aliens have on, not only the counties, but the state of Idaho. I ask for support to relieve Idaho taxpayers of the requirement to pay medical expenses for illegal aliens who have broken federal law by intruding into our country and demanding rights that they are not entitled to.

Matthew Campbell, Local Boise Attorney - opposes this bill.

He has a significant immigration practice and wants to testify to the legal issues regarding this bill. There are federal constitution issues including the supremacy clause. Any state law might conflict with constitutional rights and would be invalid. A body of constitutional, statutory, and administrative law exists to protect the due process rights of individuals in immigration matters and in removal proceedings. This bill would ask state officials to determine individual's legal status in this country. The executive office for immigration review and the federal courts are responsible for making the determination of someone's legal status in the country. Many times this determination takes a long time, sometimes it's unclear, sometimes it's a hotly contested legal issue. A state employee might make a determination that is different than the federal government would make and wouldn't have those due process protections in place to protect people's rights in regards to this matter.

The proof that is required to determine somebody's legal status isn't always clear. People born outside the United States might have citizenship claim based on a parent. In these cases immigration authorities did not automatically issue a piece of paper or other proof to prove someone's legal status. They may or may not have a social security number. If local officials acting under color of law violate people's due process rights in regards to these lines they might be liable under applicable law. This could lead to the liability of not only state workers,

but also in the health care and hospital industry who participate and help along these lines. He would ask this committee to keep these legal issues in mind and oppose this bill and to not subject state employees or health care workers to liabilities for violating federal law in trying to comply with state law if this state law were to pass.

Adan Ramirez, Idaho Action Community Network - opposes this bill.

Mr. Ramirez gave an impassioned speech opposing this bill. He believes that American people help each other and that we are all human beings. He believes that this bill will not solve the money situation as it will only be shifted to another area. He says many immigrants pay taxes. Also, those who receive assistance from the indigency fund have a lien placed on their "real and personal property" and are expected to pay back what they can. He knows that the immigration and health care systems are not working, but this is not a solution to those problems. (See Attachment #3 for complete testimony.)

Dr. William Rainford, Catholic Charities - opposes this bill

He explained that he was representing the official position of Bishop Michael Driscoll in opposing this bill. It is his belief that access to medical care is a fundamental human right. Illegal immigrants who are already very afraid of government institutions will be all the more reticent to seek the necessary life sustaining care. Look for real statistical information, not anecdotal stories and rhetoric of people who seek to politically gain. (See Attachment #4 for complete testimony.)

Marty Durand, Legislative council for the American Civil Liberties Union - opposes this bill.

She believes this bill presents a real preemption problem. Enforcement of immigration law is exclusively with the federal government. The state or clerks in hospitals would be making the legal status decision. It really doesn't solve the problem and she opposes this bill.

Fred Tilman, Ada County Commissioner and Chairman of the Association of Counties Legislative Committee - supports the bill.

He explained that this piece of legislation has been studied thoroughly by people that work and deal with this issue on a daily basis and it was voted as a high priority piece of legislation for this session to address. There is a problem and it is growing. He mentioned that he was in the House when the Catastrophic Fund was put into place and now that he has seen how it is administered, he is very proud and the partnership has worked well. In this partnership, we have an issue that needs to be resolved. We need help to get some tools that we can use to control costs above what we have to put out from our property taxpayers and what has to be put out from the Cat Fund. He addressed some of the comments that were made earlier. We are not denying healthcare and we would still pay the health care providers. It's just how long and what level of care are we obligated to pay. It's my understanding that service would be provided where they

were medically stabilized and the emergency no longer existed and that would be determined by a medical provider. I encourage the support of the committee for this bill.

Dr. Russ Newcomb, Idaho Medical Association - opposes the bill.

He explained that they oppose the bill for three reasons. First, it is a cost shifting bill and it shifts the medical care costs for non-citizens to the employers and more specifically to the medical care provider community. It ultimately becomes a health care provider tax. I was one of the sponsors when the Cat Fund bill was passed in 1992, and I would say that the county was a limited cost entity that had to pay for the health care costs for their citizens. We broadened that base to a state-wide cost base for cases over $10,000. Secondly, we are concerned about the "point of stabilization" - when do you really transport these people and what does stabilization mean? Stable is a subjective, descriptive, clinical term; it is not an objective designated stage in an individual's recovery. There is a cited code that doctors are supposed to use to determine when that point of stabilization is achieved. One sentence from the cited code is "Stabilization is a nebulous concept." We need a stated recovery condition that a person much achieve before transfer. Lastly, this bill fails to consider the complexity of the deportation system. It's easy to move patients from town to town, and from state to state, but it's another thing to move a patient from country to country.

Steve Millard, President Idaho Hospital Association - opposes this bill.

The Idaho Hospital Association is opposed to this bill as well. Some of the reasons are the same as mentioned by Dr. Newcomb. The mission of the hospital is to take care of the patient until they are ready for discharge. That may be stabilization or sometime before that. The other issue regarding stabilization is that liability. The cost shift is also an issue.

Corey Surber, representing St. Alphonsus - opposes this bill.

She explained that the opposition of this bill is much the same as Dr. Newcomb's. We have national problems, it is not unique to Idaho. Hospitals are put in a difficult position when they are already under Federal regulations to provide care. There is also the issue of stabilization and the difficulty of defining the point that a doctor would feel comfortable for a patient to be put on a bus or plane and sent back to their home country. Since our concerns have already been paraded by others before me, I end my testimony.

Teresa Molitar, Vice President of Human Resources, Idaho Association of Commerce and Industry - opposes this bill.

IACI is opposed to this legislation primarily because of the last paragraph that has been added to this statue section, paragraph 9, which in her opinion and the opinion of her association open up employers to all kinds of liability issues and essentially cost a lot of money in litigation. For instance, if an employer knowingly and willfully hires an illegal immigrant

that's a question that must be litigated at some point. She questioned how one would know if the illegal immigrant's condition did arise during the course of employment? She was confused about whether an employer is required to provide medically necessary services to members of an illegal immigrants household. Also in the next section it mentions that the employer relied on some papers that on their face looked legitimate. She would recognize that these are serious problems, but respectfully suggests that Senate Bill 1105 is not the appropriate solution. (See Attachment #5 for complete testimony.)

Lyn Darrington, representing Regence Blue Shields of Idaho Health Insurance Company, Employers Compensation Insurance Company and Workers Compensation - opposes this bill.

She first stated that neither one of her clients willfully or knowingly hire non-U.S. citizens. They are both opposed to this legislation and their concern is with the text on page 5, lines 11-18. Basically, an employer has no control over when an employee becomes ill or when that employee has an accident or when that employee contracts a serious and chronic disease or illness, such as cancer or diabetes. If an employee is injured on the job in a typical manner there is worker's compensation insurance to fill in for that. There is also health insurance for a covered employee and his or her family for any other circumstance. Her client's concern is that those employers and individuals who do not willfully or knowingly employ non-U.S. citizens are going to be unfairly penalized with that cost shift and premiums are already very difficult to afford. While she understands the plight of the Association of Counties, she does not think this is the appropriate vehicle.

Christina Delgado - from Burley, Idaho - opposes this bill.

I would just like to briefly summarize the real issue here. Immigrants, whatever their status, are still human beings. Immigrants are here for a better life, working, studying, contributing to the economy and community, working and paying taxes. Senate Bill 1105 is not a solution to the problem. She encouraged the committee to vote against this bill.

The senators discussed several areas of concern: (1) the amount paid for indigent medical services and reimbursements via liens, (2) the point of stabilization, (3) transferring a patient to country of origin, (4) reciprocal agreements with other states, and (5) and the federal immigration policy.

Senator McGee made a statement of concern that he has on the issue of the employer's section, the area of stabilization, and he stands willing and ready to sit down at a table and determine a course of action to make this bill right.

MOTION: A motion was made by **Senator McGee** that we hold S1105 to study further. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**.

Senator Broadsword also made a statement that she was in agreement with Senator McGee in the need to address some of these concerns.

Senator Kelly voted no to send to print and am opposed to it now. Since the print hearing and looking at the legal and constitutional issues associated with this proposal, it's very serious. It is very much a matter of immigration law and constitutional law and any further consideration of this idea would need to take this into account. Otherwise, we risk a lot of legal and potential attorney fee exposure.
Senator Werk also makes the statement that this bill optimizes one operation at the expense of another.

ADJOURN: The meeting was adjourned at 4:58 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Thursday, February 17, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Chairman Compton called the meeting to order at 3:07 p.m.
GUESTS:	There was no sign-in list for this day.

Presentation: **David Lehman**, Policy Advisor:
Overview Health and Welfare and Medicaid

Mr. Lehman presented the Committee with an overview of some interesting information about health care and some of the trends taking place nationally and the implications it has for medicaid programs. Health care in America is typically characterized in terms of crisis. Over the past couple of decades there has been a dramatic increase in utilization and development in technology around health care. Technology has both improved the quality of care, extended life, and improved the quality of life. He thinks we should change the tone of debate around health care. People are living longer because of the things that are being done in health care and that is an opportunity, not a crisis.

See Attachment #1 for Mr. Lehman's slide presentation overview.

S1142 Relating to the Treasure Valley Air Quality Council and Other Regional Air Quality Councils - Presented by **Senator Langhorst**

The purpose of this legislation is to provide a venue for stakeholders in an airshed to proactively work together as an Air Quality Council and to implement coordinated strategies in improving air quality. This legislation provides legislative intent and the framework for Air Quality Council to draft implementation plans for legislative approval before airsheds are designated to be in nonattainment of air quality standards. There is no fiscal impact to the general fund.

See the following attachments relating to S1142:

- Attachment #2 Memo from Lauren McLean of the Idaho Conservation League in support of this bill.
- Attachment #3 email from Judi Steciak with her comments regarding Bill S1142.

- Attachment #4 from Walt Snyder and the Environmental Science and Public Policy Research Institute (ESPRI).

Mike McGown, Regional Administrator at Regional Office of DEQ, and previously the Air Shed Manager. -Treasure Valley has a long history of air quality problems and the issues associated with the wintertime inversions. He said that in the past there had been issues with carbon monoxide and PM10 (Particulate Matter) and they have been out of compliance. It has taken about twenty years to go through the processes to get into attainment on these issues. They have seen new issues of PM 2.5 in the winter and of ozone in the summer. The population growth and increased traffic are a concern. He hopes to be proactive in addressing some of these new air quality issues. DEQ supports this legislation because it will provide the mechanism to identify, prioritize, and help implement a community based council. The Payette Watershed Advisory Group was a model for this type of council.

Roy Lewis Eugeren, Attorney with Givens & Pursley. - The Amalgamated Sugar Plant operates three sugar processing plants throughout the state of Idaho with the largest located in Nampa, Idaho. That particular plant along with the rest of industrial manufacturing in this air shed contribute only 3% of the total pollutants that are found in the air shed. It's a highly regulated facility and the company has currently embarked upon a massive program to upgrade the pollution control technology at the plant and are spending 14 million dollars to increase the ability to reduce the pollutants by about 90% and also make the process more efficient. He brought several things to the attention of the committee.

1. The council will not have any enforcement authority. It's a planning entity.
2. The final plan that's created by any of these councils will come to the legislature to either accept, or reject the plan, in whole or in part.
3. The provisions of this legislation cannot require local units of government to do anything other than, to the greatest extent practicable, adopt the plan.
4. The council sunsets in seven years.

He supports this bill.

MOTION: A motion was made by **Senator Broadsword** to send to the Floor S 1142 with a Do Pass recommendation. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**.

S1141 Relating to Peer Review Procedures for Skilled Nursing Facilities; Amending Section 39-1392a, Idaho Code, To Define Additional Terms and to Make Technical corrections; and Amending Section 39-1392e, Idaho Code, To Include References to Skilled Nursing Facilities within Procedures Specified - Presented by **Robert Vande Merwe**, Executive Director of the Idaho Health Care Association -

He explained that the peer review process has been in existence for more than thirty years for health care providers in Idaho to "improve the

standards of practice in the state of Idaho." He went on to say that health care has changed a lot in the last thirty years. The types of patients that were in the hospital thirty years ago, even fifteen years ago, are now in skilled nursing facilities. Effective internal investigation and review by professional peers has been critical in ensuring that organizations improve the quality of care that they provide. This would require frank and honest disclosures and evaluations by those participating in the peer review process. In some organizations, some were fearful of personal liability or encouraging or contributing to liability or litigation in their own facility. To avoid such claims and to encourage open dialogue, this peer review process was created to ensure that peer review records are not subject to disclosure outside the peer review process and to provide immunity to those who participate in the peer review process. The requested amendment is to not change the peer review process for any of those that are currently offered, but to extend the same protections granted to others also to skilled nursing facilities or nursing homes.

MOTION: A motion was made by **Senator Keough** to send to the Floor S1141 with a Do Pass recommendation. The motion was seconded by **Senator Broadsword**, and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator McGee** that the minutes of Thursday, February 10 be approved as written. The motion was seconded by **Senator Broadsword** and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:32 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, February 21, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Chairman Compton/ excused
CONVENED:	Vice Chairman Broadsword called the meeting to order at 3:02 p.m.
GUESTS:	See attached sign-in list.

S1143 Relating to Medical Assistance; Amending Chapter 2, Title 56, Idaho Code, by the Addition of a New Section 26-209n, Idaho Code, To Provide a Medicaid Buy-In for Workers with Disabilities, To Provide Requirements, To Provide Eligibility Requirements and to Provide for Premiums - Presented by **Kelly Buckland**

Mr. Buckland made reference to his slide presentation on the Medicaid Buy-In Program (Attachment #1).

He explained that the Balanced Budget Act of 1997 was the first time that a Medicaid buy-in type program was offered. However, Governor Batt's Medicaid Reform Advisory Council recommended the Medicaid Buy-In Program in 1996. Again in 1999 there was a work incentive program called TWWIIA. He referenced a handout on the Medicaid Buy-In Program (See Attachment #2).

The Medicaid Buy-In program allows people to go back to work by permitting them to "buy into" Medicaid while working. Currently, there is no incentive to work more than part-time since if one earns one dollar too much, they will lose their Medicaid coverage. That coverage pays for the supports and services that people with disabilities need in order to go to work. With Medicaid Buy-In, when the eligible person goes to work, they pay a premium, based on a sliding scale, which enables them to retain their coverage. The program encourages self-sufficiency and independence instead of trapping people in dependence and poverty.

The fiscal impact for this program is $430,000. Many neighboring states have a buy-in program. After nearly ten years of discussing this program, there still is no buy-in program.

Senator Darrington asked Kelly if he had discussed this with JFAC and what was their reaction. **Kelly** replied that last year instead of trying

legislation, they tried to just fund this through JFAC. The budget was passed and then reopened. There was a motion made to provide $200,000 to funding for the Medicaid Buy-In Program, but because it was reopening the budget it required two-thirds vote and it fell one vote short. The chairman at the end of the last session said he would work with me through the year to try and get funding for it this year. However, he told me it was not a good year to go after money, but he suggested an endorsement of the germane committees. So it seemed best to get a bill passed. **Senator Darrington** asked if when he referenced the computer system in the Department of Health and Welfare, was it the same computer system that would be necessary if they ever implemented the pharmacy program by AARP that won't be on line until 2008. **Kelly** said that it was not - it would be a different one in order to calculate and collect the premiums.

Bobby Ball, Executive Director of Americans with Disabilities. She claims she is underpaid for the work she does. She is on Medicaid. If this bill passed, she would be able to make the amount of money that she is worth. She supports this program.

Mike Keithly, a retired Marine, lives in Cascade and is a member of SILC - He represents parents of children with disabilities. He reiterates that if people with disabilities are on Medicaid, they can't take promotions and raises and come off Medicaid down the road. He is in support of this program.

Roger Howard, Executive Director of LINK, a private, non-profit center for independent living. They provide services to people with disabilities by hiring workers with disabilities. They believe that people with disabilities have the personal knowledge that is needed to do a better job. They are currently trying to recruit people with disabilities for four open positions. They don't offer a great wage, but try to be somewhat competitive and yet it can be too much for folks to retain their medicaid coverage and not enough to support the services they need out of their own pocket. He supports this program.

Jim Baugh, Executive Director of Comprehensive Ads Inc. - He explained that they receive contributions and federal funds to provide legal advocacy and do public policy on behalf of Idahoans with disabilities.
They have a board made up primarily of people with disabilities or parents of kids with disabilities that sets policy and direction. An important thing to be done by passing S1143 is to change attitude. The programs created to help have kept them trapped. There needs to be a change in the system so dependency and poverty are not encouraged. Instead of being penalized for working, they can be rewarded. People with disabilities need more than the health care that the current medicaid program deals with, but with the services that would enable them to work.

Senator Coiner asked about how the states that have this program have done. **Mr. Baugh** said that every state's program was aimed at different populations and the work incentives are different. He said it may be difficult to compare. **Mr. Buckland** said Mr. Baugh's reply was accurate. There are varying degrees of experience with this program. New Mexico's program was the closest to Idaho. **Senator Coiner** asked if in general were people in these other states becoming more economically mobile than

before the program. **Mr. Buckland** replied that people had been able to increase their wages, but the program has not been in place long enough to see people moving off of Medicaid.

Marilyn Sword, Executive Director of Idaho Council on Developmental Disabilities - She would like to emphasize that her organization had been on the task force working on this program for the past 10 years. With this bill, the Medicaid Buy-In would be the primary insurance and Medicaid would be supplemental. They would still need the personal assistance that Mr. Buckland mentioned was necessary for them to go to work. This is a beginning to give people choice control, independence and responsibility in their lives. (See Attachment #3)

Steven Rodolet, Executive Director of Employment Development Corp. - We work with people who are disabled and wish to work and use federal work incentives. Many of our folks are medicaid and medicare recipients and we have returned about $680,000 to the state of Idaho over the past two years. He said he has learned that you can actually do things that have very positive outcomes if you plan carefully and execute well. Everyone needs a job. He supports the bill.

Senator Keough asked Mr. Rogers of Health and Welfare about the infrastructure grant and what is the medicaid buy-in component that is in the budget. **Mr. Rogers** explained that as Mr. Buckland mentioned the medicaid infrastructure grant was received in 2001 and part of those funds were in support of the initial effort that was mentioned developing the proposal that came out of Governor Batt's Medicaid Reform Advisory Council. The grant was suspended, but was reactivated by Governor Kempthorne. The largest item of money in the infrastructure grant was for automated system changes. The difference between this program and the AARP program is that there is a federal grant available to cover those resources. No changes have yet been implemented.

Senator Broadsword confirmed with Mr. Rogers that the cost to the state that Mr. Buckland mentioned would be enough for his department to run the program.

MOTION: No motion was made as **Chairman Compton** had requested no decision be made until he was present. **Vice Chairman Broadsword** said that the Chairman would get in touch with Kelly Buckland when he wanted to schedule more testimony, or to send S 1143 to the Floor.

SJM105 To The Senate and House of Representatives of the United States in Congress Assembled, and to the Congressional Delegation Representing the State of Idaho in The Congress of the United States - Presented by **Senator Brandt** - This joint memorial is basically asking Congress to enact legislation that would appropriately allow states to implement their own drinking water protection standards and to allow more flexibility with the different states in aspect of regulations and testing. Don Munkers, with the Idaho Rural Water Association will continue with testimony. He explained that by supporting Senator Brandt's resolution, there would be more control and more direction into the state to the drinking water program. In the oversight meetings that are coming in April or May, it is suggested that the Congress of the United States re-evaluate the Safe Drinking Water Act and provide the monies from that Act in the form of block grants to the states to

administer the program within the guidelines of the environmental protection agency or the Congress to the benefits of the state. Rather than spending an important amount of money in a rule or regulation that is mandated by EPA, the state could direct that money to issues that are more pertinent to the state. The arsenic rule is a part of this and affects about 100+/- systems and is going to be extremely expensive to treat to the MTL that has been suggested. The communities that are trying to address these issues are stuck with trying to come up with money to fund the treatment. He supports this resolution.

Senator McGee asked if DEQ had been involved with this approach. **Senator Brandt** said he had not talked with them, but DEQ understands the issues; the arsenic issue is just one of many where small rural water systems have to continue to prove their testing. DEQ has to implement and enforce all these restrictions and tests and don't have the ability to give leniency or fund the aspect of the requirements.

Senator Kelly understands that the state does implement the federal program. She does not see how this fixes any problem. **Mr. Munker** says the money for the Safe Water Drinking Act comes from the EPA and there are severe penalties for not complying to the nth degree with those rules and regulations that come with that money. For example: If the certification program is not exactly what is mandated, then 20% of the SRF money would go back to the federal government. This resolution would provide the money in the form of a block grant so that if the state saw a more critical issue than having certification, then those monies could go to address that issue. The state should have the flexibility to make determinations rather than have the mandates come from the national government.

MOTION: A motion was made by **Senator Darrington** to send SJM105 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator McGee**, and the motion was **carried by a voice vote**. **Senator Kelly** and **Senator Werk** voted no.

SCR110 Stating Legislative Findings and Authorizing the Legislative Council to Create a Committee to Study the Prevalence of Cervical Cancer and Human Papillomavirus in Women in the State of Idaho and to Evaluate the Current Methods of Public Education and Access to Regular Cancer Screening and Options for Increasing Screening Accuracy. - Presented by **Senator Broadsword**

Postponed until Tuesday, February 22nd.

ADJOURN: The meeting was adjourned at 4:30 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	February 22, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	**Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Keough, McGee, Coiner, Werk, Kelly**
MEMBERS ABSENT/ EXCUSED:	**Brandt**
CONVENED:	**Senator Compton** Called the Meeting to order at 3:02
MINUTES:	**Senator Werk** complimented **Senator Compton** on his speech this morning to JFAC.

S1154

JoAn Condie, Idaho State Pharmacy Association, presented S1154 to the committee. This bill would allow Pharmacists transferring into the state of Idaho to work immediately upon completing the requirements for temporary Licensure. She stated that there is a shortage of pharmacists in the state and this would alleviate the problem. As it is now, the pharmacists have to wait at least 14 weeks while awaiting other states to fulfill the request for information before they can go to work. She also noted that there was a mistake on the bill in Section 1, page 2, in line 32, following "shall" delete "not." She asks that the bill be approved to send to the floor with a recommendation to Do Pass. (See attachment 1)

Senator Werk: Expressed concern with the cut in the waiting period for the pharmacists, and questioned whether we could face the possibility that we would fail to do background checks, history checks, and investigate disciplinary actions.

JoAn Condie: Explained that the purpose of the bill was just to get the pharmacists to work in a quicker time frame. All the requirements for the pharmacists are still in place. The pharmacist would sign a sworn statement and they would work while the Board of Pharmacy is doing the checking and the other states provide the necessary paperwork. If there were findings that there were false statements, then the Board of Pharmacy could pull the temporary license immediately.

Senator Werk: We are talking about fourteen weeks, so we could expect if someone came, that they would have their temporary licensure for no longer than that time period, it wouldn't be a six-month period before you would be getting the required information, is that correct?

JoAn Condie: The bill actually addresses that. Once the sixteen weeks

are up and all the paperwork is not in they are just not licensed anymore. They cannot reapply for a license for at least a year. It is up to the Applicants to make sure that the states are getting the information to the Board of Pharmacy as quickly as possible.

Pam Easton, President Idaho Retailers Association, asked that the committee vote yes for this legislation.

Motion: **Senator Darrington** moved to accept S1154 and send it to the floor with a Do Pass Recommendation.

Senator McGee Seconded the motion.

Senator Keough stated that because there was an error in the bill she felt a substitute motion was in order.

Substitute Motion: **Senator Keough** moved to accept S1154 and send it to the floor with a Do Pass Recommendation, with the Amended Section 1, page 2, line 32.

Senator McGee Seconded the motion.

The **motion** was approved by a **Voice Vote.**

Senator McGee to Sponsor S1154

SCR110 **Senator Broadsword presented SCR110.** This is a resolution that would authorize the legislative council to appoint a cervical cancer illumination committee to take the lead in reviewing data regarding cervical cancer and papillomavirus in the state of Idaho. Cervical Cancer strikes more than 12,000 women in the United States each year. The end result is more than 4,100 deaths according to the American Cancer Society statistics. Cervical Cancer rates second only to Breast Cancer in the number of women it affects worldwide. Despite the prominence of this deadly cancer, it is the only cancer in which we know the cause, HPV or papillomavirus. With regular and accurate screening, cervical cancer is highly preventable and although widespread screening programs have helped to reduce death rates of women from cervical cancer, women are still dying even with such advanced medical techniques and evaluative procedures. This addition, the duties of the Committee shall include the identification of pockets of need, priority therapies and preventive vaccines which are effective in preventing and controlling the risk of cervical cancer. **Senator Broadsword** asked the committee to support the legislation and to approve this study committee. Senator Broadsword stood for questions. A hand out was distributed to the committee. (See attachment 2)

Senator Darrington: Would you expect that this committee would develop legislation to be brought forth into the legislature?

Senator Broadsword: That is a possibility. She thought that when they find out what's being done, we can determine if there is a need to educate. The current use of the pap smear test verses HPV or skin press pap is one of the stumbling blocks to prevention and early detection. The pap smear was developed more than 50 years ago and is outdated.

Senator Compton: To follow-up as to what Senator Darrington was questioning. Be it further resolved that the committee shall timely report its findings and recommendations, including any proposed legislation to the Second Regular Session of the Fifty-eighth Idaho Legislature. This shows a specific directional. It's a little vague.

Senator Broadsword: You are correct. I think it will determine on what the findings are with the committee as to whether there needs to be legislation or not.

Senator Compton: How many people do you expect will be involved in this committee?

Senator Broadsword: It is listed on page 2, on lines 13 and 14. The Legislative Council shall appoint three members from the Senate and three members from House of Representatives Health and Welfare Committees as members of the Committee.

There was discussion between **Senator Compton** and **Senator Darrington** as to committees and protocol.

Senator Kelly stated that it does not state the numbers on the committees as reported.

Senator Broadsword stated that was correct, that there had been a rewrite and the numbers do not show on the bill.

Motion

Senator Werk made the motion to send SCR110 to the floor with a recommendation to Do Pass.
Senator Kelly seconded the motion.

Senator Compton commended **Senator Broadsword** and all the others that worked on this piece of legislation.

Motion was carried by **Voice Vote**.

Adjourned

Meeting was adjourned at 3:31 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 23, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Keough, McGee, Coiner, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: Senator Brandt/excused

CONVENED: Chairman Compton called the meeting to order at 3:03 p.m.

GUESTS: See the attached sign-in list

S1153 Relating to Vulnerable Adults; Amending Section 18-1505, Idaho Code, To Revise Punishment Provisions Applicable to the Abuse, Exploitation or Neglect of A vulnerable Adult. - **Senator John Goedde and Michael J. Kane**, Idaho Sheriffs Association.

This bill deals with abuse, exploitation, or neglect of vulnerable adults and would make it a felony to intentionally abuse or neglect a vulnerable adult under circumstances likely to produce great bodily harm or death, or to exploit a vulnerable adult in those cases where the monetary damages exceed $1,000. Under the current law, **Mr. Kane** explained, it is only a misdemeanor to abuse, exploit or neglect a vulnerable adult.

Senator Goedde explained a case from Coeur d'Alene. The prosecutor had evidence of allegations that went back several years and was not able to do anything because the statue of limitation for a misdemeanor is one year. At the felony level, the limitation goes to five years.

Heather Reilly, a prosecutor, representing the Idaho Prosecuting Association. She explained that her association had worked with the Sheriff's Association and the Idaho Commission on Aging as well as with Senator Goedde to present this legislation.

Sarah Scott, Idaho Commission on Aging believes this is a long time coming. She explained a case that happened in the Pocatello area. A son lived with his elderly father who had disabilities and was supposed to be caring for his father. By the time Adult Protection got a complaint about that case, they went with law enforcement, took photos, and immediately transported the father to the hospital where he died two days later. The photos showed bed sores that looked as if he had been shot with a shotgun. The son was sentenced to 180 days in jail. I support this bill.

William J. Bonner, a Meridian, Idaho resident over the age of 65 gives the

following testimony. “ I'm also a former attorney and judge in Alaska, admitted to the practice of law also in Texas and Pennsylvania (all inactive). In addition, I'm a Licensed Master Social Worker in the State of Idaho and a Certified Social Worker in the State of Kentucky. I'm a member of AARP and part of its Capito1 City Task Force.

I come before you today in support of S1153. If I may speak momentarily to the reasons for AARP's position, Mr. Chairman: A Survey Report by NAAPSA (the National Association of Adult Protective Services Administrators) in 2003, prepared for the National Center of Elder Abuse, found, among other things, that among more than half of victims of financial exploitation (58.4% being female), some 64.7% were age 66 or older. This may be because many women of that age have often been in a dependent status for much of their adult lives, as well as having financial resources that attract exploiters like honey attracts bears. See the Executive Summary on the full report, which I have provided to you.

In addition, the American Bar Association adopted a Recommendation at its 2002 Annual meeting, which addressed many of the same issues. The recommendation urged coordinated, multi-disciplinary approaches to deal with the issue. The fact that both the Idaho Sheriffs Association and the Idaho Prosecuting Attorneys Association are interested in this legislation bodes well for ultimate passage. I would hope that the Adult Protection Services under the Commission on Aging (Title 67 of the Idaho Code) would also be consulted as to actions that can be taken under Chapter 53, Title 39, Idaho Code, entitled "Adult Abuse, Neglect and Exploitation Act." See also IDAPA 15, Title 01, Chapter 02 for rules governing area agency APS programs. It seems to me and the other 160,000 Idaho members of AARP, that a coordinated effort should be made to put teeth into a growing problem in Idaho and nationwide.

As the ABA report noted, "the National Center on Elder Abuse reports that the number of reported cases of domestic elder abuse (that which occurs in the community, rather than in a long term care facility) has risen from 117,000 in 1996 to 470,709 in 2000. Research indicates that only one in five cases is reported to authorities."

Our own senior U.S. Senator, Larry E. Craig, (R), was co-chair of a 2001 Senate Special Committee on Aging hearing, titled "Saving Our Seniors: Preventing Elder Abuse, Neglect and Exploitation." In closing remarks, he urged block grants to elder abuse prevention and advocacy. (see http://www.senate.gov/comm/aging/general/) Whether that has resulted in any such federal appropriations, I do not know, but you can at least criminalize certain activities which disproportionately affect Idahoans over the age of 65. I stand ready to attempt to respond to questions that you might have of me.”

A letter was received in support of this bill from **Robert Vande Merwe**, Executive Director of Idaho Health Care Association. (See attachment #1)

MOTION: A motion was made by **Senator McGee** that S1153 be sent to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Darrington**, and the motion was **carried by a voice vote**.

S1140 Relating to Family Planning; Amending Chapter 2, Title 56, Idaho Code, By the Addition of a New Section 56-209n, Idaho Code, To set Forth Legislative

Findings, To Provide that the Director of the Department of Health and Welfare Shall Apply for a Family Planning Demonstration Waiver, To Require the Director to Establish Baseline Birthrates and To Provide a Report to the Legislature and To Define Terms. - Presented by **Senator Keough**.

She passed out a chart of the financial aspects that will help demonstrate the fiscal impact statement. (See Attachment #2) She explained that this proposal is to provide family planning services to women that are 19 or older who are enrolled in Medicaid Pregnant Women and Children programs (PWC) and to women and men whose children are enrolled in Children's Health Insurance Program Plan A (also known as CHIP, Plan A. In year one and two, there will be a cost for implementing this program, but in year three, four and five and in the out years, there will be a savings in the medicaid budget. The goal here is to provide preventative services to women and men in the low income category. By providing these services to this segment of population, it will provide an opportunity for some basic family planning health services which would include pap smears, breast exam, cervical cancer and family planning, but does not include abortion services. Any current provider accepting Medicaid patients would be delivering these services.

Senator Keough then introduced her co-sponsor of the bill, **Representative Margaret Henbest**. The recipients of this benefit would include mothers who are on PWC and CHIP. This is for women who are clearly in their childbearing years and have already had a child and used state assistance for one of these programs and who would be interested in receiving voluntarily family planning services. This service would give them the ability to better control the spacing of their children and to have their children at a time when they are in good health and when their family and their lives are stable. The federal government pays for 90% of the cost of providing family planning services under Medicaid compared with the usual 70% match for regular Medicaid or the 80% match received under CHIP. For over a decade, states have been increasingly expanding the medicaid eligibility for family planning services by applying for these waivers similar to what is being proposed today. In addition, in 2001, President Bush instituted a new requirement that family planning waiver programs facilitate access to primary care services. It is now required that states establish formal relationships with community health centers and that information is provided to these enrollees of these waivered programs that lets them know of the availability of community health centers. These waivers are currently in place in 19 states, with pending waivers in 7 states. By federal standards, they must be budget neutral to the state and to the federal government. Medicaid pays for 40% of all the births in Idaho and across the nation. As a result, we pay for 50% of all hospital stays related to childbirth and that includes expenses for neo-natal care. What cannot be measured are the consequences of child abuse and neglect which are far more frequent when the child's birth is unwanted. Information from the department estimates that over half of medicaid births are considered unwanted or unplanned by the parents.

Stacy T. Seyb, MD at St. Luke's Regional Medical Center. Testimony as follows: "I am a physician who specializes in Maternal-Fetal Medicine, which means that I care for high risk pregnancies. Many high risk and complicated

pregnancies are not planned. Unintended pregnancy is strongly associated with late prenatal care, premature birth, low birth weight, and even infant death. After birth these babies are off to a poor start in life and their health care is very expensive.

Many unintended pregnancies are in poor married women who do not have the means to afford reliable contraception. Reduction of unintended pregnancies has been demonstrated in other states by making contraception services more widely available and affordable. Planned pregnancies are associated with improved success and healthier babies.

Senate Bill 1140 will expand access to contraceptive care for poor women who may have a history or increased risk of poor pregnancy outcomes. This is truly preventive health care by preventing unintended pregnancy. It will decrease the number of premature babies and newborns with lifelong health issues. This will improve the health and well being of the citizens of our state and ultimately save health care dollars. Some savings estimates are as high as $7 for every dollar spent.

Senate Bill 1140 provides increased access for women in all parts of our state without specifically benefitting any one single agency or organization. It should be emphasized that only methods and treatment for pregnancy prevention will be provided. No destructive or abortive methods are funded. By decreasing unwanted pregnancy there will also be a decrease in the incidence of abortion as well.

Assistance programs are often accused of being handouts. Providing families with the ability to make better reproductive choices will allow them to improve their chance of lifting themselves out of poverty. Please support Senate Bill 1140 as a proactive way to improve the health of babies and citizens of our state."

Senator Broadsword asked Dr. Seyb what percentage of his patients were medicaid patients. **Dr. Seyb** replied 75 - 80%**. Senator Broadsword** asked how many of those get pregnant before their body has time to recuperate. **Dr. Seyb** guessed maybe 20 - 25%.

Ted Epperly, M.D., Chairman and Program Director of Family Medicine Residency of Idaho. His testimony follows:

"I speak in favor of S 1140 as this will help optimize the care we provide to mothers after the delivery of their children. The program as it now stands provides 60 days follow up, but the 60 days begin the month of delivery.

So if a patient delivers on the 1st of the month, they get 60 days of follow up, but if they deliver on the 25th of the month, the 60 day count starts the 1st day of the month they delivered in. So the patient really only gets 35 days of follow up care. The fallout from that is as follows:

1. The pap smear collected at the 6 week postpartum check is not covered by Medicaid, so patients simply do not show up for these appointments.
2. Contraception choices like IUD's and Depo-Provera Injections are not covered, and the patients chose not to have the service because of cost issues and may end up pregnant soon after they deliver.

The Family Medicine Residency of Idaho is in strong support of this senate bill as this would help ensure ongoing continuity of care to our patients at a transitional period in their life that is critically important.

Thank you very much for helping support important care to these vulnerable young mothers."

Senator Compton asked if his firm had delivered 1,000 babies, what in this program would enable him to provide greater advice and counsel than he can right now. **Dr. Epperly** replied that they would not have a ticking clock that runs out based on the time of the month of the delivery.

Elena Rodriguez, a volunteer for the March of Dimes Idaho Chapter. Her testimony is as follows:

"The March of Dimes is pleased to testify today in support of Senate Bill 1140, legislation that would instruct the Department of Health and Welfare to apply for a demonstration waiver to expand family planning services. SB 1140 will enable the state to draw down federal dollars that will pay for 90% of Medicaid family planning services as compared to only 70% of other Medicaid services.

The mission of the March of Dimes is to improve the health of babies by preventing birth defects and infant mortality. Pre-term birth, low birth weight and infant mortality are all correlated with both unplanned pregnancies and pregnancies spaced too close together (pregnancies spaced less that 18 months apart). The March of Dimes recognizes the value of pre-pregnancy health care and family planning in reducing the risks of birth defects, low birth weight, and infant mortality. The March of Dimes supports access to family planning services for all women of childbearing age, regardless of income.

Pre-term birth (births that occur before the 37th week of pregnancy) and low birth weight are serious issues in Idaho. In 2002, there were 2,172 babies born pre-term in Idaho, representing 10.4% of live births. That is an average of 42 babies a week born too soon. While our rate is lower than the national average, between 1992 and 2002, the rate of infants born pre-term in Idaho increased 21%. Also, each week an average of 25 babies are born low birth weight which is less that 5 1/2 pounds.

Babies born too soon and too small are at risk of serious complications including developmental delays, chronic respiratory problems, and vision and hearing impairment. In 2002, the year for which we have the latest data, the average hospital charge per infant stay with a principal diagnosis of prematurity or low birth weight was $79,000. In comparison, for a newborn without complications that average hospital stay is $1,500.

Half the time a woman goes into pre-term labor, the cause is unknown. However, some risk factors for pre-term birth and low birth weight are known. They are an unplanned pregnancy, a previous pre-term or low birth weight birth, a pregnancy spaced less than 18 months after previous pregnancy, multiple birth, smoking, infections, and poor nutrition. A woman who is able to plan a pregnancy has a greater chance of reducing some of

these risks and is likely to seek earlier prenatal care that can also reduce other possible medical risks.

For these reasons, the March of Dimes supports SB 1140, which would help extend family planning services to eligible women and couples.
Thank you for allowing the March of Dimes to testify on this issue."

Kathy Holley. Director of Central District Health Department, speaking today on behalf of all seven health districts in Idaho. She urges the Committee to send SB 1140 to the floor with a "do pass" recommendation. Her testimony follows:

"The health districts are a safety net for low-income women wishing preventive health services, to space the birth of their children or to postpone pregnancy. Our typical client is a 24-year old woman working at minimum wage who does not have health insurance. Her first experience with us is often to receive a pregnancy test.

We evaluate her eligibility for Medicaid's Pregnant Women and Children's program and refer her tor prenatal care to one of the health care providers in our area accepting Medicaid. That provider sees the woman through her pregnancy and up to 60 days after delivery. After 60 days, only the infant is eligible for Medicaid under the PWC program. Often, this is the crucial period when the woman is lost to follow-up care. In the best of worlds, the woman will be referred back to the health district for continuing services. If she acts quickly and we have an opening, she may be able to continue her contraceptive method without a gap. All too often though, when we see her, it is for a pregnancy test. If the test is positive, the cycle begins again but now it is with a woman at higher risk for negative consequences for this pregnancy because it is too soon after the last pregnancy.

It is recommended that women space their children at least 2 years and preferably 3+ years apart for optimal health outcomes for mother and baby. This spacing decreases the likelihood of maternal and infant complications.

Continuing their medical coverage for two years post-partum would provide a medical home to these women and encourage pre-pregnancy planning. In addition to decreasing the interval between subsequent births, good medical care in the pre-conception period can reduce birth defects and infant mortality. It is my hope that making Family Planning services available for the crucial two years following the baby's birth would interrupt the cycle of unintended pregnancy and low-interval births.

Would caregivers benefit financially from this waiver? The answer is yes - many of our family physicians, especially in rural areas, obstetricians in the cities, FQHC's like Terry Reilly who serve some of the lowest income individuals and families, and the health departments in our existing family planning clinics would receive financial support for caring for these women. But the real financial winners in this project are young families who can space their children and properly care for each and every precious bundle."

Senator Compton asked Kathy if she sincerely believed that the information provided in this health program to be helpful. **Kathy** responded that there are people that have no way of getting the prescription they need

without this program because of the money. If they aren't pregnant, they are put on birth control, if they are pregnant they start them on folic acid and vitamins. Since they can help them now how does this program help questioned **Senator Compton**. **Kathy** replied that the family planning program is paid for by fees and Title X and some of the state general or county funds. It costs about 4.5 million for family planning and about $1,250,000 comes from Health and Welfare through a contract through Title X and Title V. We charge about 1.3 million fees, but our district contribution is almost 2 million dollars. She said they had a lot of programs and family planning competes with WICK, Senior Nutrition Program, Land Development, WELLS, and several others.

Judith Murray, Executive Director of the Idaho Nurses' Association and a nurse with many years of experience in women's health and public health issues. Her testimony follows:

"I am speaking in favor of SB 1140, the family planning demonstration waiver.

In my nursing career, I have learned the importance of healthy families who are able to plan the birth of their children. This enables them to be able to care for, financially support and educate these children. Spacing births helps decrease high risk pregnancies and such unfavorable outcomes as pre-maturity and low birth weight infants. Reducing these unwanted outcomes are especially important for low income women and for the Medicaid program as all cause increased medical bills. Not only are pregnancy costs higher than family planning services, the costs of neonatal intensive care are wildly higher with long term implications.

As a nursing professor I have taught young nurses that prevention is cost effective. This Medicaid waiver is cost effective. While the 90:10 ratio of federal money to state funds decreases Idaho's input, the savings are expected to be large. Twenty-one other states have successfully implemented similar plans. Rhode Island realized savings of over 2.5 times the initial investment.

I urge you to consider this waiver both as a way to improve the health of low income Idaho Women and to save Medicaid funds. Thank you."

She also referred to the letter from Katie Schimmelpfennig, RNC, BSN (see Attachment #4).

Paula Bermudo, Grad Student, representing Idaho Public Health Association. Lee Hannah, President of Idaho Public Health Association is another contact. Paula's testimony follows:

"The Idaho Public Health Association is a non-profit organization that has been dedicated to the promotion of sound physical and mental health in our citizens since 1934. We are here today to ask you to support Senate Bill 1140 to extend family planning health care coverage.

As you know, women who are currently enrolled in PWC only have access to family planning health services for 60 days after they give birth. In order to improve the health of Idaho women, this coverage needs to be extended. A

study conducted by the Centers for Disease Control and Prevention in 1999 revealed that the highest rates of unintended pregnancy occurred among women covered by Medicaid, with lower rates among women covered by other types of insurance. This discrepancy was linked to the lack of follow-up care needed to assist families with prevention of unwanted pregnancies.

By voting for this bill, you will be providing men and women in Idaho with better access to basic health care. When pregnancies are wanted and planned, they result in healthier women, healthier babies, and greater family stability. CDC refers to the concept of comprehensive family planning as "Safe Motherhood". Safe motherhood is a woman's ability to have a safe and healthy pregnancy and delivery, regardless of their status in society. The first step in a safe and healthy pregnancy is that the pregnancy be wanted.

Family planning is more than preventing unintended pregnancies. It is a chance to provide comprehensive health exams, including patient education, mammograms to screen for breast cancer and pap tests to screen for cervical cancer. Data from the Centers for Disease Control and Prevention highlights the fact that Idaho lags behind the rest of the nation in providing needed prevention services. Idaho ranks 50th out of 52 states and territories in the percentage women who have had a pap test within 3 years, 51st on the percentage of women who have had a routine check-up, and 52nd on the percentage of women receiving the recommended mammogram and cholesterol screenings.

Access to health care family planning services is needed to avoid the medical, social, and economic costs of unintended pregnancy. The Idaho Public Health Association encourages you to support SB1140 and improve the lives of families in Idaho and encourage Safe Motherhood. This is a wonderful opportunity cost effective for Idaho to improve health care access for women and families."

See Attachment #5 for maps of states that shows where Idaho stands.

David Ripley, Executive Director of Idaho Chooses Life

He explains that he opposes this legislation primarily for the reason that it represents a massive public subsidy to have the abortion industry in Idaho, specifically Planned Parenthood. He would urge members that would support this legislation that if they believe it's wrong to ask the taxpayers to facilitate the agenda of Planned Parenthood, when there are reasonable alternatives available.

Senator Coiner said he was having a hard time understanding what Mr. Ripley just testified to and how it had anything to do with this bill. Could he please explain. **Mr. Ripley** explained that Planned Parenthood of Idaho would be a primary debt pusher of this money and it's clearly a federally

funded health client providing all of the specific services listed in legislation. He believes it would provide a mass confusion to their organization in terms of providing the services and the profits associated with providing the services. If it is determined that the state of Idaho should pay, he would urge that you restrict the use of these funds.

Senator Broadsword asked if he thought that private physicians who are seeing these women should not prescribe the medication that they need. **Mr. Ripley** said they did not object to private physicians being able to access these funds for medications, but they do object to Planned Parenthood of Idaho being able to access the funds. He thinks it would be the cleanest way to fix the problems with this legislation if the money went through public agencies that are publicly accountable for the dollars. **Senator Broadsword** said that would cut out the physicians. It doesn't make sense that you say you want the family physicians to do it, but then want to go through public agencies. **Mr. Ripley** replied that he is merely stating that they do not object to private physicians accessing the money; the objection is that this public funding is going to help finance an organization with a radical, social, and political agenda.

Senator Compton wondered how he would help reduce the costs of these medicaid babies that are being paid for by the state with some federal assistance. **Mr. Ripley** said that two years ago Idaho Chooses Life brought legislation here to take advantage of an initiative by the President that would expand the CHIP program to include pre-born children. We thought that was a tremendous opportunity for the state to improve the quality of care of babies. Much of the discussion today rings bells with me in terms of the debate we encountered two years ago trying to look at how to expand health services for pregnant women and children. One of the things I find curiously lacking from the discussion today about the risk of pre-term and low birth rate babies is the impact of abortion on those rates.

Senator McGee says he is a conservative, pro-life, Republican and he read this legislation and it clearly says in the bill that this is not an abortion bill, that it does not fund abortions. He said he was confused about Mr. Ripley's testimony. There are some disagreements according to **Mr. Ripley** about some of the contraceptives that are taken after conception and actually abort the child. Millions of dollars will flow to Planned Parenthood as a result of this bill and the state of Idaho will be writing checks to Planned Parenthood of Idaho.

Elinor Chehey, President, League of Women Voters of Idaho - deferred to the people with the clinical stories. See attachment #6 for testimony.

Lee Flinn, Program Director of the Idaho Women's Network and representing members in support of Senate Bill 1140. Her testimony follows:

"Family Planning is essential health care for women and families

Family planning health care includes comprehensive health exams, including screening for breast and cervical cancer, screening for sexually transmitted diseases, and blood pressure testing. It also includes information including abstinence, natural family planning, and contraceptive methods.

Family planning health care is essential health care for women and families in Idaho. Often, this type of health care is the only health care that many women receive.

Family planning health care allows families to achieve their childbearing goals and avoid unintended pregnancies and the unplanned births or abortions that would follow.

Family planning health care provides access to a service that people want and need to improve their own health and it saves taxpayer money.

Family planning waivers are effective

In November 2003 the CNA Corporation, along with Emory University and the University of Alabama at Birmingham conducted an evaluation of family planning waivers. This independent evaluation was commissioned by the Centers for Medicare and Medicaid Services (CMS) and examined the programs and outcomes of six states (Alabama, Arkansas, California, New Mexico, Oregon & South Carolina).

Overall conclusions of the CMS evaluation include:

- All six states were budget neutral, meaning that the savings were greater than the amount spent on family planning services. Budget neutrality was calculated by estimating how many maternity and infant cases would be likely to occur in a Medicaid eligible population without family planning coverage, and then to assess whether this number is lower than the number that does occur in the population once family planning coverage is implemented. The amount of savings realized from the demonstration is estimated by multiplying the average cost of maternity and infant coverage in the state by this number of averted births.
- The presence of a family planning waiver was associated with a decrease in unintended pregnancies among eligible women
- All six programs resulted in substantial net savings (Oregon's program saw a savings of nearly $20 million the first year, and South Carolina realized total savings of $56 million over a three year period)
- The CMS study found that family planning waivers also increased access to health care services. In recent years, the Bush administration outlined a new requirement that states must establish formal arrangements with community health centers to provide referrals to primary care services to individuals enrolled in the family planning program.

- Besides the CMS evaluation, both Washington and Oregon have conducted evaluations of their family planning waiver programs and the results have been very positive.

The Centers for Medicare and Medicaid Services (CMS) supports family planning waivers as a way to encourage innovative approaches to health care delivery within the Medicaid system. Since 21 states have a family planning waiver, and there is now over a decade of evidence to the effectiveness of these programs-Idaho is in an excellent position to learn from other states and develop a waiver that will both increase preventative health care access, and result in a likely substantial cost savings to the state. If Idaho implemented a family planning waiver program through this legislation, the estimated cost savings to the state is over $4 million over a five-year period.

Family Planning has broad support

The U.S. has demonstrated a commitment to family planning health care since 1970 when President Richard Nixon signed into law Title X of the Public Health Service Act. Upon that occasion he remarked:
"No American woman should be denied access to family planning assistance because of her economic condition. I believe, therefore, that we should establish as a national goal the provision of family planning services...to all who want but cannot afford them."
In June 2004, the National Governor's Association Center for Best Practices published an issue brief regarding strategies for improving birth outcomes and reducing high-risk births. Family planning waivers were one of several policies highlighted as a "best practice". The majority of people in Idaho support and use family planning health care. I hope you will support this effort by sending S1140 to the Senate floor with a "do pass" recommendation."

Senaor McGee asked which 21 states had the family waiver program. **Ms. Flinn** replied: Alabama, Arizona, Arkansas, California, Delaware, Florida, Illinois, Maryland, Minnesota, Mississippi, Missouri, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Carolina, Virginia, Washington, and Wisconsin.

Judy Walker, a Catholic taxpayer who opposes this proposed legislation. She explained that Planned Parenthood already has an operating budget that they get from Medicaid and other sources. She said they would say this money would not be used for abortions, but it will free up the other money they already get in order to do just that. They will be able to do more advertising to entice more innocent people to use their anti-life services, which include referrals for abortions. They already give out birth control pills which act as abortificiants or unseen abortions. Their organization is supposedly pro-choice. But where is her choice, she voiced. She would choose not to support them in any way. When her daughter was 16 she got pregnant. Some people said to her "we know you're Catholic, but is abortion an option?" Thank God it was not something they would ever

consider. It was not easy dealing with the situation, but it did not ruin their daughter's life. It only changed it. They now have a beautiful 14 year old granddaughter and their own daughter is happily married and is an attorney. As a taxpayer and a Catholic she urges the committee to reject this bill.

Senator Keough took the podium. **Senator Broadsword** said that they had heard a lot of options for women, but if a low income family has had a baby on Medicaid and they decide not to have any more and the husband would like to have a vasectomy - would the funds from this aid the man? **Senator Keough** deferred to someone from Health and Welfare to give the answer to the question.

Patti Campbell, works with the division of Medicaid. If they elected to have a vasectomy, it would pay for that.

Senator Compton said he would like to understand more about checks that might be written to Planned Parenthood as Mr. Ripley mentioned. The hospitals and the doctors have said they would like to extend the care of these women particularly that are under Medicaid from 60 days or 31 days out to a period of time. How does Planned Parenthood, the organization, not the concept, come in? **Ms. Campbell** said that anybody that is a medicaid provider at this time will be paid for the particular services in family planning. Those include contraceptive, voluntary vasectomies and/or tubal ligation. It would have to be the consent of the family. **Senator Compton** asked if Planned Parenthood had clinics that would provide those services? **Ms. Campbell** said yes, that was correct. **Senator Compton** said if they looked back to what Kathy Holley and Central District Health does - they provide advice and counsel, a different level of service, right? **Ms. Campbell** was not sure. **Senator Compton** said that he didn't believe they provided vasectomies. **Ms. Campbell** said that was correct - he was right.

Kathy Holley spoke up to say that they did provide a full range of family planning services. They do not do abortions obviously. They have an agreement with Family Practice Residency Program to teach their residencies how to do a vasectomy so they do come over to the Health Department and those services are provided at a low or reduced cost.

Senator Keough reiterated what she said in the beginning about who delivers these services. The seven health districts throughout Idaho, any of the private physicians and providers currently providing medicaid services. Further, the health districts serve about 30,000 clients throughout Idaho and Planned Parenthood is currently a provider. They have a clinic in Boise and in Twin Falls. My understanding is that they have a client load of 8,000 patients, far less than the health districts served. Also Planned Parenthood in Boise and in Twin Falls do not provide abortion services in Idaho.

Senator Werk said that if he was a person that was taking advantage of the services that would be offered under the waiver, that he would be free to go to whatever provider he would feel comfortable with. He would not forced to

go to Central District, or Planned Parenthood, or Doctor X, or Clinic Y. **Senator Keough** answered that that was correct. Statistics show across the country that the patient is going to stay in their medical home, which is a new terminology, but it is where they have gone and where they are comfortable going.

Senator Keough presented her closing remarks. She said S1140 was about prevention that results in healthy women, healthy babies and healthy families. This is a means to provide the tools necessary to a segment of the population that statistics show struggle with the challenges. **Representative Henbest** spoke briefly to add clarity to what some perceived as the unintended consequence of this bill. The CMS study commissions showed the utilization of services by people who qualified for waivers in those states. People moved toward private providers and away from Title X clinics in most states. The other point is that somehow they would be subsidizing other programs that they would rather not subsidize in Planned Parenthood. Most providers say that Medicaid does not even pay its way. Other programs subsidize Medicaid. There will not be a surplus of dollars for this program to use someplace else. It was alluded to that some of these products actually are abortive. There is clinical and scientific evidence that supports that these products primarily act as contraceptive agents.

MOTION: A motion was made by **Senator Kelly** to send S1140 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Coiner** and the motion was **carried by a voice vote**. **Senator Keough** will sponsor S1140 on the Floor.

DISCUSSION: **Senator McGee** said that one of the folks that testified had a comment and he wondered if it would be appropriate to clarify that comment at this time. He explained that someone that testified had felt that this program would actually reduce the amount of abortions based on the availability of medicine and technology and other things to those people. **Senator Keough** answered that though she was not a nurse or a doctor and doesn't have that scientific background, she would say that that's exactly what they were trying to do here. With family planning services provided there would be healthier mothers, healthier babies, and healthier families and there would be a reduction of unwanted or unplanned pregnancies which result in abortions. There are statistics that support that.

ADJOURN: The meeting was adjourned at 4:28 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Thursday, February 24, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator Broadsword/excused
CONVENED:	Chairman Compton called the meeting to order at 3:12 p.m.
GUESTS:	There was no sign-in sheet.

PRESENTATION

Terry Reilly Health Services - Community Health Care Center System in Idaho - Erwin Toyber, Executive Director, speaking on behalf of the Idaho Friend and Parent Association of Community Health Centers across the state of Idaho.

He explained that he was here to plant some seeds for a bill in the future. Also with him was Jesus Blanco, Program Policy person, to help present the slide presentation. See Attachment #1.

DISCUSSION

Referencing S1089 - Relating to the Idaho Prescription Drug Program: Steve Tobiason, Pam Eaton - Idaho Retailers, Joann Condie - Idaho Pharmacy Association, Bill Roden - Representative of the Pharmaceutical Manufacturing.

Steve Tobiason, representing AARP - He explained that they have had meetings with the pharmacists. They identified three issues of concern and he believes they have satisfactorily resolved two out of the three. The third one, at this point is not yet resolved but there have been further discussions on it. In relationship to private industries, the manufacturers, and as a result of the meeting with Mr. Roden last week, there was a draft of new legislation prepared. They were unable to get together with Mr. Roden again as they had been trying to get a conference call with Mr. Bruno in Maine for his input. He hopes to get together again with Mr. Roden as soon as his schedule allows. He asked for the committee's indulgence to give them some more time, at least until next Tuesday. At that time he hopes to have an agreement to meet the needs of the people as much as possible. Some of the changes are significant and it would be difficult to amend the bill; there would probably be a need to draft a new RS.

Bill Roden, PhRMA - He expressed some concern although he was not against having more time for discussions. After the meeting last week, he felt it necessary to have more discussions and he prepared a paper to outline in general some basics that the pharmaceutical manufacturers had to see in legislation. (See Attachment #2 for his comments to Mr. Tobiason) He said they met again with Mr. Tobiason and Mr. Gallegos on Thursday afternoon and in concept the objectives seem to be accepted, and that he spent the weekend drafting a piece of legislation to accomplish those objectives they had talked about. He was not concerned that anyone was not acting in good faith, but the concern he had was that since he had sent out that document, there had been conference calls and the department had been involved in discussions about the draft. He was also aware of continuing discussions with the pharmacists as to what prices they can accept for their drugs. There had been no contact to discuss the work that was done last week.

Senator Werk asked if he was specifically requested to draft a piece of legislation. **Mr. Roden** said he did recommend that they start over and not work with the language as it was. He went on to explain that he did not think that this committee was directing him to come with a piece of legislation; he presented a piece of legislation for consideration by the interested parties so they might have more discussion. He also pointed out that AARP had been responsible for arranging these meetings; they do not include us with discussions with the pharmacists, nor pharmacists in discussions with us. All of the players have never been at the table at the same time. **Senator Compton** clarified what the parties had been asked to do and then asked that **David Rogers** come to the podium.

David Rogers, Division of Medicaid - He said the department recognized the need from the first hearing to provide some relief to people of low income individuals and it was a worthy effort. He said their view had been to make sure that the administrative effort required of the department surpassed the resources that might be available to support those particular efforts. It would be preferable if these folks could find some way to work together. They had been supportive of better access to the pharmaceutical assistance program and in his view that is also a good resource. There are two different approaches to address this particular issue and the important question is what is the best solution.

Senator Compton reiterated the case in Maine and their ability to use their state-of-the-art information system and they would not need additional head count. As he recalled, the financial impact was high, maybe $500,000. **Mr. Rogers** answered that in regard to system changes that would be required to implement the program as designed in legislation prior to later discussions was as low as $430,000 and as high as $2 million. **Senator Compton** said it was his understanding that the department was going to send out RFPs in the spring in order to purchase a new system that would have the capability of input for this type of program. At that time, the department would identify the vendor, hardware, software and then come back for supplemental budget after a price tag had been established and get approval and have this implemented sometime in 2006. **Mr. Rogers** corrected the

implementation date to January 2008.

Senator Brandt clarified that one computer system that could do everything; the drug card issue, the buy-in policy, and a co-pay issue. **Mr. Rogers** said that they operated essentially a claim processing system or medicaid management information system that is certified by the federal government and that pays the providers. It also holds eligibility information and various other information for the services they provide. They are looking now for systems that are configurable so there would be more flexibility. Right now, for example, part of the issue is with co-pay and there has been a lot of discussion about the system's impact. It can't apply to all medicaid eligible persons as the ability of the systems to have two different pricing systems (one with a co-pay, one without a co-pay) is needed. The AARP legislation might create the potential for a third or another pricing schedule for the same service. The existing system does not have that capability, but it is quite commonplace in the market right now.

Senator Brandt asked if Mr. Rogers would clarify that they had three different issues. Will a $2 million dollar system do everything, or is this about getting the system and then spending the $430,000 to $2 million for each aspect? **Mr. Rogers** said that their estimates right now is that a new management system could be as much as $30 million. It would be 90% financed by the federal government with $3 million of state funds. Until the time when a new system can be procured a new system, the existing system must be reprogrammed. They are developing the fiscal impact for all the proposals that might come before the committee, depending on the implementation date whether it is immediate or not. He understands that the reason that the proposal from AARP was delayed until 2008 was because of the fiscal impact of making those changes in the current system. **Senator Brandt** said in aspect of the buy-in policy, the drug program, as well as a co-pay and by looking at appropriating funds for this computer system, is this going to open up the door to take on these three programs easily, or is it part of the cost. **Mr. Rogers** said they would hope that there was some synergy between some of these proposals and that they could leverage one or the other although they are sometimes very different in scope and require different things in the system. The AARP legislation primarily will require eligibility, but changes in the claims processing and pricing file; the medicaid buy-in will require that eligibility component and a premium collection mechanism, but won't require any changes to the pricing file. Most of the time they are having to cost these different enhancements out separately because they touch different areas of the system.

Senator Compton said that one of the main issues is the application processing and he thinks that is why the estimate was five to eight people needed to complete this. **Mr. Rogers** said that the Division of Medicaid operates primarily with a claim processing system and there are issues also in the Division of Welfare who does the eligibility part and sometimes there would need to be changes to both systems**. Senator Coiner** asked how many people it would take to administer this program long term. **Mr. Rogers** said eight. **Senator Coiner** asked what would be the cost of

administering this program. **Mr. Rogers** said $400,000 annually. **Senator Coiner** continued that as it gets going, it's anticipated that some or all of that would be reimbursed through the program. **Mr. Rogers** said it was anticipated; from the department's perspective it would need to be required by the application or drawing funds or from any rebate arrangement with manufacturers to cover administrative costs.

Senator Compton said he read the first bill and one of the questions that he doesn't understand is the rebate. Under the AARP program, a person goes in and gets his prescription and they give the card and the price is set and they pay for it. The rebate, as it was described, some money comes back from the pharmaceutical companies and then it would be distributed out to the pharmacist that sold it. It seemed clumsy to him. **Mr. Rogers** agreed that there was some administrative complexity, and they do that currently in Medicaid. The reimbursement that is provided to the pharmacy for each prescription spent, the invoice from pharmaceutical manufacturers and the rebates in terms of receipts to offset the expenditures. As he understands the difference in this bill, there would be an additional transaction when the rebate is received to pass on to the pharmacist. **Senator Compton** confirmed that they do currently get a rebate from some of the manufacturers and that is kept because they have paid for the drug.

Senator Darrington suggested that all the parties go to the table to negotiate and come up with something that is agreeable with all parties if they want to get a bill. **Senator Compton** said there are some good programs out there that people don't know much about. He would like some suggestions from these folks of how to make the general public aware, and cooperatively let the people know about these programs. Senator Darrington said that a pharmacist from Senator Keough's district said the other day that he had numerous patients that were on those private programs. He couldn't believe that there would be a pharmacist with several pharmacies, such as the representative from Maine, who didn't have one single client that was on those programs.

MOTION: A motion was made by **Senator Darrington** to give the parties working on S1089 whatever time they need and then to coordinate with the Chairman when to bring it back to the committee.

DISCUSSION: **Senator Coiner** suggested that perhaps they could accomplish the intent of what this bill does without Health and Welfare's participation, without the state putting up $1 million, or whatever it is to instigate a program. Can there be a working program to utilize what is now available that would get help to these people before 2008? Something in 2005, or even 2006? It seems that should be one of the agenda items.

MOTION, CONT.: The motion above was seconded by **Senator Brandt**, and the motion was **carried by a voice vote**.

S1143 Related to Medical Assistance; Medicaid Buy-In - Presented by **Kelly Buckland**

See Attachment #3 for handout, Attachment #4 Sword support letter.

Senator Compton was not present when Kelly Buckland gave his last testimony and he asked the committee if they needed any more testimony. **Senator Darrington** said they had a good hearing and he didn't think there was any question that the program is needed, but there were two questions. (1) if members have decided that they are ready to make the philosophical move. (2) will it be funded and the answer is an absolute no, having three members of JFAC on this committee? His seat mate in the Senate is Chairman of the Finance Committee and he had a long discussion about this and he said you can quote me "It will not be funded." There is no question about the good it can do - there isn't any question that there are those out there in need. That is not the issue.

Senator McGee said that what Senator Darrington said is true. They are under the gun as far as finding dollars to pay for some of the great ideas that we would like to promote. They had a long discussion this morning and hit a road bump in regard to funding one's supplementals. This is a difficult year.

Senator Coiner said that there are needs in this state that are not being met, or partially met. When there is something positive that would enhance people's lives and have a long term benefit and it is not put forward because of a financial impact, then there is a risk that the bigger body does not see or have any awareness of these needs. If this is something that is philosophically good, he would recommend letting it get some debate and some air in the full body.

Senator Werk agreed with Senator Coiner and said that even though there was no money, this committee is about investment and what is good for our citizens. When there is an idea of an investment that will result in long term payback, the committee should advise along those lines. If the finance committee or JFAC doesn't have the money to do that, so be it.

Senator Compton agreed that was a good point. One is philosophical and to support the program.

There was more discussion about the merit of the program and the unintended consequences among the Senators.

Senator Compton asked David Rogers if there was some alternate plan or something in the budget to consider. **Mr. Rogers** said there were three different paths or scopes of work that all attempt to remove disincentives to workers with disabilities. The first is the legislative that is before the committee, a buy-in program. What was in the current intent language in this year's appropriation act was a budget neutral buy-in program. The concept of the budget neutral is based on a discussion they had before this committee last year and would be to obtain a waiver at a special dispensation from the federal government to provide the buy-in coverage to individuals already on medicaid and allow them to go back to work to increase their earned income. Some might call this a limited buy-in. The third scope of work that they have been focusing on with the medicaid infrastructure grant is prime incentives in current law and they will have rules published this month under federal provisions in the Social Security

Act. Presuming that there might be legislative activity this session, the steering committee discussions on the limited buy-in did not move forward. They did not want to re-program the current system, then have legislative action directing them in another way and be in a situation where they had to re-program the system having used the resources allocated in the federal grant. Additionally, the federal government has not been keen of that limited program under a waiver. They have turned down two states with very similar requests. They asked for some of their grant money to help develop that waiver request, but they would not view that as an allowable expenditure.

Senator Werk said the federal grant, of something like $112,000, that is for medicaid buy-in - what does that cover? **Mr. Rogers** said that would depend on the legislative action that might or might not pass this session, and how much flexibility they are afforded by their federal partners. If, for example, the legislation pending before this committee were to pass, the worth of those resources could be assessed. Assuming that this doesn't happen, the direction would be to do that limited program, find a way for people on medicaid not to lose coverage when they go back to work. That may not be an option depending on what the federal government says. The department still has the grant resources and would then go to the third option and try to make better use of those current work incentives that are available under current law. **Senator Werk** to clarify that money that is on the supplemental could be used to begin a process for the buy-in program that we are talking about so there are some dollars on the table now to help cover costs. **Mr. Rogers** said that was correct.

Kelly Buckland said that the infrastructure grant was originally 2.1 million from his presentation. That money was specifically granted to the state of Idaho from the federal government to build a Medicaid Buy-In system. Also, when the legislative intent language said budget neutral, what they meant was that the entire medicaid budget would not cost any more. So when you look at that 1 billion-dollar budget for medicaid, medicaid buy-in couldn't cost the state any more money in the medicaid program. It did not mean that the medicaid buy-in program specifically had to be budget neutral. What Mr. Rogers was talking about in the options - the only option that gets us where Governor Batt's Medicaid Reform Advisory Council is - is legislation. The implementation of the program could be delayed. That's another option.

Senator Kelly asked Mr. Rogers if $112,000 was left over in the grant? **Mr. Rogers** said the grant was $500,000 - the $112,000 referred to was in their decision unit and associated with the staffing. **Senator Kelly** confirmed that this grant award could be used to implement the infrastructure of the buy-in program and she then asked how far that would get them? **Mr. Rogers** said they could develop the program.

Senator Brandt still wondered about the changes to the computer system. If they decide on a buy-in program, they have to commit quite a few dollars to have a new program developed to handle it on this old system. If the computer system is going to be changed, there are some public domain systems that could be implemented on the new system.

He would like to have more information on these new systems and costs in aspect of implementing a whole new system versus individual programs for the old system, whether the buy-in, or the RX card.

The senators continued to discuss the options, especially the money concerns.

MOTION: A motion was made by **Senator Keough** to send S1143 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Werk**, and the motion was **carried by a voice vote**. **Senator Darrington** voted no.

MINUTES: A motion was made by **Senator Coiner** that the minutes of February 22, 2005 be approved as written. The motion was seconded by **Senator Keough** and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:39 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, February 28, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Senator Compton called the meeting to order at 3:05 p.m.
GUESTS:	See attached sign-in list

HJM3 To the Senate and House of Representatives of the United States in Congress Assembled, and to the Congressional Delegation Representing the State of Idaho in the Congress of the United States. - Elmer Martinez

Representative Martinez presented the development of the Pocatello Proton Accelerator Cancer Treatment Facility. Proton therapy is a form of radiation therapy that provides superior doses to the tumor sparing the surrounding healthy tissue and thereby eliminating some of the painful and other side effects associated with surgery and other forms of radiation therapy. Otivus, the company that has developed these type of facilities in other areas and currently has one at Loma Linda University Medical Center. This facility would offer state-of-the-art medical services to rural Idaho and surrounding states and national and international markets for cancer treatment. It would also have the benefit of creating numerous high paying jobs for our local and state economy. These are very high tech types of therapy that have particular strengths for ocular cancer and prostate cancer. He submitted letters of support from Mike Simpson and Larry Craig. (See Attachment #1 and #2)

MOTION: A motion was made by **Senator Werk** to send HJM3 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Brandt** and the motion was **carried by a voice vote**. **Senator Marley** will sponsor HJM3.

H42 Relating to the Board of Optometry; Amending Section 54-1507, Idaho Code, To Delete Obsolete Language and to Provide that Licensees Shall Pay Fees Annually at the Time of Renewal - Rayola Jacobsen

This changes annual renewals to birth date renewal of licenses and deletes obsolete language.

MOTION: A motion was made by **Senator Werk** to send H42 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator McGee** and the motion was **carried by a voice vote**. **Senator Werk** will sponsor H42.

H43 Relating to the board of Hearing Aid Dealers and Fitters; Amending Section 54-2907, Idaho Code, To Revise Education Requirements for License Applicants - Rayola Jacobsen

MOTION: A motion was made by **Senator Coiner** to send H43 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator McGee** and the motion was **carried by a voice vote**. **Senator Coiner** will sponsor H43.

MOTION: A motion was made by **Senator Keough** to send H45 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**. **Senator McGee** will sponsor H45.

H50 Relating to Cosmeticians; Amending Section 54-808, Idaho Code, to Increase the Student to Instructor Ratio, To Clarify that Student Instructors Count as Instructors for Purposes of the Patio and to Increase the Amount of the Required Bond. - Roger Hales

This bill accomplishes two things: (1) It increases the student-teacher ratio for cosmetology schools from 1-15 to 1-20 and clarifies that student instructors are not to be counted as a student. (2) It increases the bond required for schools to $25,000 from $5,000.

MOTION: A motion was made by **Senator Broadsword** to send H50 to the 14th Order for an amendment to replace the language on page 1, line 13 "with a student instructor not counting as a student for purposes of the student-instructor ratio." The motion was seconded by **Senator Kelly** and the motion was **carried by a voice vote**. **Senator Broadsword** will sponsor H50.

MINUTES: A motion was made by **Senator McGee** that the minutes of Monday, February 14, 2005 be approved as written. The motion was seconded by **Senator Broadsword**, and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 3:43 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

+ MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, March 1, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

MEMBERS ABSENT/ EXCUSED:

CONVENED: Chairman Compton called the meeting to order at 3:03 p.m.

GUESTS: See attached sign-in list.

H41 Relating to Physicians; Amending Chapter 18 Title 54, Idaho Code, by the Addition of a New Section 54-1841, Idaho Code, To Provide a Volunteer's License, To Specify Qualifications, to set forth Application Requirements and to Govern License Renewal and Revocation. - Presented by Representative Bob Ring

Doctor Ring explained that doctors were now retiring at younger ages, either from burnout or not wanting to put their life savings in jeopardy. It would seem a shame for a 55 year old, bright, well trained doctor to quit practicing medicine. Many of these doctors would work in free clinics or sliding scale clinics and provide some very needed medical care for the under served. This bill provides a license for retired physicians to work in a free or reduced fee clinic as long as they are not reimbursed other than actual expenses. They must have had an active license to practice within the previous five years and must not have given up their license in lieu of punitive problems.

Doctor Ring said there had been questions from the House about continuing education and Dr. Newcomb had assured him that although there is nothing in this bill about it, the state Board of Medicine does require twenty hours or more of continuing education as a prerequisite to renewal of any medical license. Another question was about liability protection which is also not in this bill. However, Idaho Code 39-7703 (Good Samaritan Clause) that was passed by Mayor Bieter's father many years ago, does provide liability protection for physicians working in free clinics.

Senator Broadsword asked if there was a test or examination to make sure that their skills were still active. **Doctor Ring** said that if it has been longer than five years since they were in active practice that the Board of

Medicine may wish them to complete an examination to make sure that they are still competent.

Senator Kelly asked if the intent of this legislation was just to exempt these voluntary physicians from the fees that would otherwise be required for licensure. **Doctor Ring** said this was so, but the bill included some sideboards to protect the public. They must be good doctors in good standing and recently retired.

Senator Compton called on **Dr. Russ Newcomb**, representing the Idaho Medical Association. He said they were in support of this bill.

MOTION: A motion was made by **Senator McGee** to send H41 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Broadsword** and the motion was **carried by a voice vote**. **Senator McGee** will sponsor H41.

MINUTES: A motion was made by **Senator Coiner** that the minutes from Tuesday, February 15 be approved as written. The motion was seconded by **Senator Kelly** and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 3:23 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Wednesday, March 2, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Vice Chairman Broadsword, Senators Darrington, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Chairman Compton and Senator Brandt/ excused
CONVENED:	Vice Chairman Broadsword called the meeting to order at 3:10 p.m.
GUESTS:	See attached sign-in list

H176 Relating to Environmental Quality; Amending Chapter 1, Title 39, Idaho Code, By the Addition of New Sections 39-175A, 39-175-B and 39-175C, Idaho Code, to State Legislative Findings and Purposes, To Provide for the Relationship Between State and Federal Law, To Provide A Process for Approval of A State National Pollutant Discharge Elimination System Program. - Presented by **Dick Rush**, Idaho Association of Commerce and Industry.

His testimony follows:

"My name is Dick Rush, and I am Vice President of Natural Resources for the Idaho Association of Commerce and Industry .Our membership includes businesses and business associations of all sizes and types from all parts of Idaho. Many of our members require wastewater permits, (National Pollutant Discharge Elimination System (NPDES) permits. These are now issued by the US Environmental Protection Agency.

This bill is designed to help the state legislature and industry decide which is better, state or federal regulation? The Wastewater permit program is one of the last federal environmental programs still administered by the federal government, not the state.

H 176 is sponsored by IACI, the Association of Idaho Cities and the Intermountain Forest Association. The Idaho Cattle Association, the Associated General Contractors, Potlatch Corporation and The Idaho Agriculture Association asked me to mention their support of this legislation. Kevin Beaton, an Environmental Attorney with Stoel Rives in Boise is with us today. Kevin drafted the legislation, and is here to answer any legal questions you might have.

I might add that our support of this legislation does not necessarily mean that we will eventually support primacy. The bill is designed to provide answers to the question:

Should DEQ or EPA regulate wastewater discharged into Idaho streams?

Currently, EPA issues hundreds of permits and manages monitoring and reports which are required by the federal Clean Water Act. These permits are known as National Pollutant Discharge Elimination System Permits (NPDES).

The current EPA program is causing unnecessary expenses and delays for industry and municipalities. The bill authorizes DEQ to explore the costs, benefits, problems and funding sources if the state takes over "primacy" of the NPDES program.

The bill clearly states that DEQ can't agree to take on the program from EPA until the legislature first passes a bill to authorize state primacy. (39-175C (4), (39-175C (5)).

IACI is especially interested in reducing the years of delay under the EPA program because of the federal requirement to consult with the National Marine Fisheries Service and the Fish and Wildlife Service on endangered species. Duplicative consultation is costing Idaho firms and local governments millions of dollars.

State primacy would allow DEQ to conduct the consultation. Once federal agencies agree that Idaho water quality standards are protective of endangered species, the consultation does not have to be repeated by individual companies or cities, as long as they meet the strict standards.

Companies in states with primacy now have a competitive advantage over Idaho firms because of reduced costs of NPDES compliance.

The heart of the bill is found in Section 39-175C, which says the DEQ is authorized to explore whether the state should operate an NPDES Program by evaluating the costs and benefits to the state, of such a program, consistent with the requirements of this section. The department shall prepare a report to the legislature as to its findings by December 31, 2005."

See Attachment #1, NPDES Primacy
See Attachment #2, letter of support from Food Producers of Idaho, Inc.

Senator Keough said she was curious about the fiscal note because of staff time that would have to come from some place to accomplish 39-175C line 13-17 and (2) and (3). She was supportive of NPDES state primacy.

Jon Sandoval, Chief of Staff of Department of Environmental Quality was called to the podium for testimony.

In response to **Senator Keough's** question, he wanted to reiterate DEQs involvement in working with the Association of Idaho Cities, IACI, and a number of industrial groups. He said this issue had been studied several times over the last five years and they had assembled information trying to make a decision as to whether or not the state should pursue primacy for this particular program. Idaho is one of the four states in the country that does not have primacy for the program. In response to the resource question, the department did pursue a request for two additional FTEs to help support this effort. They also looked at the components of the program.

- what would the rules look like
- what are the costs involved
- what types of revenues would it take
- how do they look at EPA consultation

The governor did not support the request for those two additional FTEs. Sandoval believes that they have collected enough information to prepare the report and have one staff person that can prepare the report by December 31, 2005.

Senator Kelly asked why legislation was needed for DEQ to prepare a report? **Mr. Rush** replied that the legislation covers a number of issues and they wanted to make sure that the legislature had final authority. The services, if the state takes primacy, would accept Idaho Water Quality standards under the endangered species act and the EPA would allow the state to run the program without undue interference. That's the reason for the length of the bill and the legislation that is needed.

Senator Kelly said that didn't really answer her question, but this legislation does appear to give DEQ rulemaking authority to adopt rules regarding an NPDES program and that's a powerful thing. This is not in the statement of purpose, but it seems to be a step in the direction of getting primacy without actually saying that. **Mr. Rush** responded. He said that Mr. Kevin Beaton, Attorney with Stoel Rives, who worked on drafting the legislation might give a more legal answer. He said that their membership wanted to look at the implementation of regulations as well as the results of the study before they bought off on primacy.

Senator Werk said that on page two, they were providing authorization to proceed with negotiated rulemaking without a program in place. **Mr. Rush** said that was an accurate reading of that part of the legislation. This would be a major program and would probably involve fees to industry to pay for part of that cost, a request for some state funding, and some other sources of funding. **Senator Werk** clarified that from industry's perspective, it wouldn't be good enough for DEQ to develop a draft set of rules that would be the framework of the program. The request was for DEQ to draft regulations and go through the rulemaking process, legislature was to buy off on those rules and put them in place, but could they be changed. **Mr. Rush** said that this was an unusual approach. Normally, legislation is passed to have primacy, then the agency goes out and does the rules. In this case, the agency is given the authority to negotiate the rules for the reasons given. **Senator Werk**

asked if he anticipated, while developing and running the program, that the industry would pick up 100% of the costs for the state to achieve and run the NPDES program. **Mr. Rush** replied that the policy at IACI has traditionally said that they would pay one-third part of the program and the other two-thirds would come from elsewhere. It has always been discussed one-third through industry fees, one-third through state general funds, and one-third from EPA. EPA has been wishy-washy on their one-third. He didn't know if the cities and industry would pay 100 % of the costs if the state was still in a financial bind and couldn't pay one-third and if EPA didn't come through with their one-third.

Senator Kelly asked what DEQ has done in recent years to analyze the implications of NPDES primacy and the costs and legislation that is necessary. **Mr. Sandoval** said they had done a considerable amount of work in collaboration with the cities and some of the industries in trying to pinpoint what it might cost to take primacy in the state of Idaho. **Senator Kelly** asked if they needed this legislation to make any of these decisions. **Mr. Sandoval** said no.

Senator Broadsword called on **Senator Bunderson** to discuss the bill. He said this was a cumulation of the district views coming together saying let's take another step forward and see if it's worth it. This does not obligate us to do anything - that will come later if everyone thinks it has value.

Justin Hayes, Program Director with the Idaho Conservation League. He said there were only four states that did not have primacy; Arizona, Alaska, Idaho and Massachusetts. The way that the Clean Water Act is written, it's envisioned that all states will eventually have primacy. The fact that Idaho has not had to go through those steps has sort of been a free ride for a long time. The numbers that have been bantered around for the cost of administering the program are significant - in a range between 15 and 25, depending on who you talk to. Those that are exercising caution are at a bit of a disadvantage because some want to steam ahead on the assumption that the legislature will happily pick up the tab. Some interesting things have been brought up today such as negotiated rulemaking and the fiscal impact statement. In all of the rulemakings that he has participated in, it has been abundantly clear that rulemaking is quite expensive to undertake.

Kevin Beaton, Attorney with Stoel Rives
As far as the rulemaking issue is concerned, there would need to be statutory changes in this law and maybe others before this would take affect. He believes that the idea behind this was to set out the general sidebars of what need to happen to go forward with the full program. He thinks that if DEQ initiates some sort of rulemaking over the next six months or year that is based on this statute, that the rules would not go into affect until the legislature took all the actions that are required by this statute. Even though it's a little out of the norm, the intent of the parties was to set out what needs to happen and how it should proceed forth.

Senator Werk thought that legislation was developed to have two FTEs

to be able to implement this legislation. However, if the governor doesn't give the FTEs, the legislation remains the same, and in essence, the piece of legislation that they were actually wanting to do was 39-175C(1). His understanding was that even though there was not any money by passing this they would have the ability to do all this stuff, but they couldn't do it because there was no money...and no people. This legislation gives authority, but no money to do it.

Mr. Beaton agreed with **Senator Werk's** summary. He noted that the only mandate for DEQ was to produce a report to the legislature by December 31, 2005 and the rest of it was simply discretionary with authorization to go forward assuming the resources were there.

MOTION: A motion was made by **Senator McGee** to send H176 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Darrington** and the motion was **carried by a voice vote**. Senator Bunderson will sponsor this bill.

MINUTES: A motion was made by **Senator Coiner** that the minutes of Wednesday, February 16, 2005 be approved as written. The motion was seconded by **Senator Darrington** and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Kelly** that the minutes of Wednesday, March 1, 2005 be approved as written. The motion was seconded by **Senator Darrington** and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:03 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Thursday, March 3, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator McGee
CONVENED:	Chairman Compton called the meeting to order at 3:07 p.m.
GUESTS:	See the attached sign-in list.
MINUTES:	A motion was made by **Senator Broadsword** that the minutes of Monday, February 28, 2005 be approved as written. The motion was seconded by **Senator Darrington** and the motion was **carried by a voice vote**.

Senator Compton called the committee's attention to the document to JFAC COMMITTEE. He had asked for input a few weeks ago and everyone had talked about things that were important to them. They had the Department of Health and Welfare here and reviewed their priorities and also got input from David Lehman. This report was sent to JFAC and was a composite of what was seen as priorities and some insights into the different programs. Senator Compton has tried to capture the priorities and would appreciate everyone reading it. This report can be used as a talking paper as each senator participates in forums.

S1163 Relating to Podiatry; Amending Section 54-602, Idaho Code, To Revise the Definition for Surgical Treatment, To Require Advanced Surgical Procedures to reference, To Revise the Definition for Podiatrist and to Make Technical Changes. - Presented by **Pro Tem Bob Geddes**

This legislation clarifies the surgery scope of practice for podiatric physicians and surgeons to include procedures reflecting current education, training and experience. The standard for performing advanced foot and ankle procedures in hospitals and surgical centers, including a peer review process, is identical to the standard required of medical doctors in Idaho. There is no fiscal impact.

ProTem Bob Geddes introduced Senate Bill 1163 for discussion. He explained that he was representing his position as a Senator and also on behalf of his family. He disclosed that he had a son-in-law who was studying podiatric medicine. He has learned from him that Idaho lags behind many parts of the country in allowing these physicians to practice with a full scope of opportunity based on the training and experience that

they receive. He thinks that there is broad support for this legislation if the committee will send it to the amending order and include an amendment that the Idaho Medical Association has provided and is acceptable to the podiatric physicians.

Larry Benton, Lobbyist representing Idaho Podiatric Medical Association. The Podiatric Medical Practice Act was first put into place in 1957 in statute and has not been changed since. There have been some dynamics in medicine in the past number of years with improvements in training and innovations in the process of doing surgery. The medical physicians that practice podiatry need to have the ability to practice as they are taught. They have the same feelings as the Idaho Medical Association has with respect to the need to be careful, the need for accountability, and the need to have peer review and make sure the public is going to get the best care possible in the facility. Podiatric physicians are the only other physicians and surgeons authorized to use that title in the state of Idaho under the Podiatric Medical Practice Act. They go to a four year school before they begin medical school and they have residencies, learn surgical training and are taught by medical physicians and podiatric physicians with experience. Basically they are on a par with medical physicians and they all do the annual update of continuing education that is required. The hospitals always decide what kind of privileges a medical practioner can have in a hospital. This bill allows the podiatric physician who is properly trained to do some advance surgical procedures as determined by the state board of podiatry, but they must be performed at a licensed hospital or in a certified ambulatory surgical center that is accredited by either the Joint Commission on Health Care or AAAHC. He does not know of any opposition of this bill at this time. The Medical Association has offered an amendment to this bill that allows the statute to hold the language of requiring accreditation by the Joint Commission on Accreditation of Health Care organizations or the Accreditation Association for Ambulatory Health Care facilities. Everyone is supportive of this amendment.

Ken McClure, Council for Idaho Medical Association
He explained that their concern was not for podiatric physicians who have been in a recent three year residency program to do ankle surgery. The concern they had was for those who went to podiatry school either before ankle surgery was part of the curriculum or they didn't go through the longer residency program which would allow them to become proficient in ankle surgery. It was decided that a licensed hospital or certified ambulatory surgical center had regulations in place that would be a solution to the concern. The amendment that was satisfactory to both parties was:
54-602. (2) <u>Advanced surgical procedures, as determined by the state board of podiatry, shall be performed in a licensed hospital or certified ambulatory surgical center where a peer review system is in place.</u>

MOTION: A motion was made by **Senator Darrington** to move S1163 to the 14th order for amendment. The motion was seconded by **Senator Brandt** and the motion was **carried by a voice vote**.

S1158 Relating to Naturopathic Physicians - Presented by **Kris Ellis**

There are a significantly growing number of residents in the State of Idaho who choose natural health care. The purpose of this legislation is to expand the health care options of Idahoans by licensing and setting standards of practice for Naturopathic Physicians, while affirming the rights of other health care practitioners to practice as currently permitted by law. There is no fiscal impact.

Pro Tem Bob Geddes introduced S1158. He explained that Idaho had fought over this issue many years to determine how best to administer, register, and license this aspect of health care. Nothing has been done and as a result, there is a huge difference of qualification and scope of practices and training. He hopes this legislation will be a starting point in helping to better manage that health care aspect that is so prevalent in the State of Idaho. Those who have practiced will be allowed to continue practicing, but to also provide a distinction between those who are trained at various levels and that distinction that they need in order to better qualify themselves to provide that care. He turned the presentation over to Kris Ellis to explain why it is so important and significant. He encouraged the committee to be open minded and measure the progress that has been made from years past to where this legislation is now.

Kris Ellis, representing Idaho Naturopathic Physicians Association

She explained that this is the first bill in over 40 years that is brought to the committee by both Naturopathic Physicians and the Coalition for Natural Health. As a result, this is a bill that will expand health care options for Idahoans. It might seem like a contradiction that a licensure bill is going to expand the options for the residents of Idaho. Through licensure, those who are presently educated and trained to do way beyond what they are legally able to do will be able to provide that care for their patients and your constituents. Those who are presently acting under the exemption of the Medical Practice Act will be allowed to continue just as they have been doing since the Medical Practice Act was amended to allow that to happen. Section 1, a new section that was added, reiterates the Smith decision, which was a Supreme Court case in Idaho in the late 50's that said naturopathy is not the practice of medicine. See Attachment #1 for complete testimony.

Ms. Ellis ended with a summary. She explained this bill does two things. First it allows those who are adequately trained and formally educated to practice medicine and better serve their patients. Secondly, it ensures other natural health care providers who presently practice within the Medical Practice Act exemption can continue to do so.

This legislation is a work of compromise between all partners in health care. They have consulted the nursing and pharmacy professions; the chiropractors, acupuncturists, podiatrists, certified registered nurse anesthetists, physical therapists and others. They have worked hand-in-hand with the Medical Association to try in every way reasonable to meet their concerns. They have succeeded in satisfying the concerns

expressed by all except those expressed by the Idaho Medical Association which have insisted that they establish in this proposed naturopathic physician law, a mechanism to track and regulate all of the individuals providing health services under the exemption in the Medical Practice Act. The goal was to provide a means for qualified, medically trained naturopathic physicians to legally provide limited medical services to the Idaho public, just as the surrounding states of Montana, Utah, Oregon and Washington have provided. They feel strongly that it is not their responsibility to police those already exempted by the Idaho Medical Practice Act.

Senator Darrington asked Ms. Ellis if a person could still have the choice of their naturopathic doctor after the passage of this bill. **Ms. Ellis** said that was correct.

Senator Keough asked how the public would know the difference between "N.M.D." and "N.D." under License Required 54-5103. **Ms. Ellis** said that was one of the negotiations with the Coalition of Natural Health. The term Naturopathic Doctor (N.D.) has been around for years and will not be prohibited or restricted from use. Now the public can't tell any difference, but with this bill, N.M.D. is restricted to licensed practitioners.

Ken McClure, Attorney, representing the Idaho Medical Association
He opposes this legislature. He respectfully disagreed with a comment of Kris Ellis that last year's bill was a title act like this. He explained that a title act says that if you want to call yourself "this" you have to be licensed. A practice act says if you want to "do this" you have to be licensed. That's the distinction and this bill is a title act. It says if you want to call yourself this, you can do this. It doesn't say the other part, and if you're not licensed you can't do this (which it said last year). Last year the controversy was because the bill said they could no longer do what they had been doing, which is a practice act. The IMA worked with the proponents of this legislation to come to an agreement. This bill is a concern because of the formulary council and he suggested that it be expanded to include an additional M.D. The principle issue is what this bill does not do. It does not protect the public health from the practice of naturopathy by those who are not qualified to practice naturopathy. This only expands the scope of what naturopaths can do if they are educated according to existing law and protects the use of the term of Naturopathic Physician and N.D. It does not say those who are not qualified to do this set of things, can't be doing them. Many people are practicing "natural health care" and calling themselves doctors of naturopathy. This bill will allow them to continue.

Senator Compton asked if one of the major concerns was to have another M.D. on the formulary council. **Mr. McClure** said it would not solve the chief concern which was the part where the practice of health care was still allowed and not licensed.

Senator Broadsword asked if this bill passed would these naturopathic physicians be able to bill medicaid. **Mr. McClure** did not know.

Senator Coiner said this bill takes the educated with internships and gives them a license. This group, with this legislation, is taking responsibility for the care of their business. If there is another group uneducated, unregulated holding themselves out, how is it this group's responsibility to have some interest in what the other group is doing. **Mr. McClure** said that the concern was that they are going to raise the practice of naturopathy and create minimum standards for the profession. It seems if others who are not worthy of practicing medicine to practice naturopathy and to call themselves doctors and let the public be confused about a N.M.D. and an N.D. that the standards have not been raised. It is true that IMA asked them to have a provision in their legislation, and in January they did, which would have registered naturopaths who are not licensed and would have limited the scope of what they can do. This bill does not do that.

Senator Werk said he was concerned about the formulary council and the ability to prescribe prescription drugs. The differences in training between a naturopathic school, which has 24 hours of pharmacology and the M.D. program which has a full year of training in pharmacology. His question was how or why a naturopath could prescribe medications? **Mr. McClure** said they had worked with the proponents over the last three years and they looked at their training programs, curriculum and faculty. The people that graduated from those schools were likely competent to prescribe many of the things they prescribe. However, the concern was that they would not only prescribe what they were competent to prescribe. He would also prefer to see the formulary council comprised differently.

Chuck Lempesis, representing the Coalition of Natural Health. He said they had opposed this bill every year in the past because it chose to license a group of naturopaths and register "our group". He explained that the group he referred to used heat, air, light, herbs, natural modalities. They do not do surgery and are not trained to do so. In 1959 there was a decision in the state of Idaho that said (State Board of Medicine vs. David Smith, 81 Idaho 108, April 8, 1959) "if the naturopath is limited in his practice to the use of physical culture and drugless treatment by methods supposed to stimulate or assist nature or to the use of physical forces such as air, light, water, heat, massage and other simple materia medica, the system cannot be inherently injurious or have a tendency in that direction." Nothing is indicated that would justify prohibiting naturopathy.

The people that provide alternative health care in the forms of heat, air, light and different alternative care modalities operate under the Smith Decision. The Smith Decision went on to say that if the Legislature chooses to legislate or regulate naturopaths; then this opinion is out the window. That gave concern to those that are not trained to do what some other doctors do. This bill enables those people that are well trained and competent to do certain things and they need to be licensed because those things can be injurious to the public. The bill also allows those people to do what they are permitted to do presently under the laws of the state of Idaho. They will not be able to do anything tomorrow that they can't do today. They don't need to be licensed or regulated. They may

be called Doctors of Naturopathy (N. D.) as they have been for years, but if this bill passes, they will provide a disclosure to their patients saying they are not licensed.

Senator Kelly said she was reassured by Mr. Lempesis' statements that this proposed legislation doesn't harm public health. Does it protect public health to a level beyond what is current? **Mr. Lempesis** replied that it does in terms of public disclosure and it differentiates naturopathic medical doctors from a naturopathic doctor in the historical sense. He thinks the disclosure helps to protect the public in terms of information.

Senator Keough asked what the public thinks when they hear the word doctor. **Mr. Lempesis** replied that he is a doctor, and Ms. Morgan has her Ph D. He believes the term doctor is pretty generic. He said his minister was a doctor. **Mr. Lempesis** asked if he could also address the prescription issue. The Medical Association previously signed on to the pharmacology concept and the board of pharmacology doesn't oppose this to his knowledge. The answer to the question is that everybody in practice in the medical arts can only prescribe within the boundaries of their practice.

Senator Compton brought up the concern about the Formulary Council and suggested that they put another medical doctor on the board. He asked Mr. Lempesis what he thought about that. **Mr. Lempesis** didn't think that would be a problem, but he would defer to Kris Ellis. He did know that in the past, they had offered to expand that board and that was rejected by the IMA. **Kris Ellis** stood and reported that last year Senate Bill 1300 had two pharmacists and two naturopathic physicians. It was her understanding that boards needed to be an odd number in case of ties. They added the M.D. and it was her understanding that the pharmacy schools were starting to teach pharmacists how traditional prescriptions interact with herbs, over-the-counter medicines and things that naturopathic physicians may be using. They thought the pharmacists would be better served on that council because they would better know of drug interaction that could have some bad consequences and doctors do not have that training.

Senator Werk said that the formulary council section of the bill specified how many members, etc., but it doesn't say anything about how it will operate. **Mr. Lempesis** answered that this committee would probably be reviewing the rules which that board would have to adopt regarding its operation.

Todd Schlapter, Naturopathic Physician who practices in Coeur d'Alene. He supports this bill and believes it is important because it represents thousands of Idahoans and the collective of Idaho Natural Health Care practitioners who care for them. He explained that they were brought together because of the recognition that the services they provide belong to the same fabric of knowledge and philosophy which is the healing power of nature. This bill is sponsored by the Idaho Association of Naturopathic Physicians and they have worked for years to get to this point. Because of the growing respect for what natural health care can do

to improve lives, the support for these efforts have grown enormously.

Senator Compton asked him about his education. Dr. Schlapter said he did his undergraduate work at the University of Montana, did pre-med and graduated in biological sciences with a teaching certificate and a degree in forestry. His specialty then was research in biology in plants and animals and he did work in environmental science. He went on to be accepted at the National College of Naturopathic Medicine, which is a federally accredited school of naturopathic medicine in 1979. It is a four year post graduate curriculum that requires a graduate to sit for Board Exam. He did the Board Exam and has a license in an adjoining state. He has been practicing privately since 1983.

Senator Broadsword said that when she talked to him in December, he said that this bill would make it so those who had a degree, the schooling, and license would be called doctors and those who did not, would not. She wanted to know why it had changed and why he had agreed on the change. **Dr. Todd** replied that historically that had been their position and why there was such difficulty in getting beyond that point. After a lot of discussion, they focused on licensure for naturopathic physicians. It is true that for the past fifty years in this state there has been the allowance for folks with some reasonable degree of education to be able to call themselves naturopathic doctors. The distinction is going to be licensed or not. In order to progress and go forward they accepted this position. **Senator Broadsword** confirmed that Dr. Todd was saying that this was better than nothing. **Dr. Todd** says it does make it easier for the public to make an appropriate discernment. People will choose to be served by someone that they feel has integrity and is truthful in doing what they are doing. This bill will require those working as naturopathic doctors (N.D.s), let the patients know that what they do doesn't have a standard and that they are not licensed.

Senator Darrington asked if there were any third party players, any insurance companies today who will participate in your billings and pay you and would there be any out there today who would if you were under licensure, that you know of. **Dr. Todd** said yes, there was a great deal of interest in that simply because insurance companies see the writing on the wall which is cost effectiveness of care. This bill is not a bill for the purposes of hooking into the insurance industry, but they have been approached by insurance companies that want them to be available to people who are covered under their insurance policy. They simply want to reduce the costs. In states where naturopathic physicians are licensed, the cost of what they provide is much more inexpensive.

Senator Keough asked if they would bill Medicaid today, or if this passes would you bill Medicaid tomorrow. **Dr. Todd** said no. Licensure would put them in a closer position to qualify. Among the states that are licensed, the percentage of those that can provide Medicaid is very low. Medicaid is interested in approaching naturopathic physicians and a national effort is being made to bring what they do into availability.

Senator Compton suggested that Dr. Todd answer **Senator Werk's**

concern about the pharmacology question. **Dr. Todd** explained that in order to qualify for taking a Board Exam in Pharmacology, there was a minimum of 106 hours required in pharmacology, not 24 hours. Mr. Lempesis pointed out that it's very clearly articulated in the Statute that the formulary council is not beholden to the board, it is an independent council. The board cannot tell the formulary council what it wants. **Senator Compton** asked what prescriptions he could write now. And **Dr. Todd** said none. **Senator Compton** asked about the future. **Dr. Todd** said he could only write prescriptions within the bounds of his education.

Senator Broadsword asked how many naturopathic physicians are in Idaho now. Secondly, will physicians that are granted child birth privileges be insured for malpractice as medical doctors are. **Dr. Todd** said he thought there were 50 - 60 naturopathic physicians for full scope licensures, which would change rapidly once licensure is allowed in this state. Regarding OB/GYN privileges, the bill requirements are consistent with existing Idaho statutes. **Ms. Ellis** spoke up that to have hospital privileges, you would have to have malpractice insurance.

Scott Freeborn, a Naturopathic Physician practicing in the Ketchum/Sun Valley area for the last 13 years. His schooling includes completion of my basic pre-med requirements at Southern Utah State University 1981 through 1985 and completion of a full 4 year- 4,800 hour Naturopathic Medical Program at one of the oldest Naturopathic Medical Schools in the country, The National College of Naturopathic Medicine in Portland Oregon.

He represents those naturopathic physicians who wish to support legislation that affords patients a tighter, more standardized, form of naturopathic medicine as well as a greater variety of naturopathic medical services. They are interested in acquiring the authorization necessary to provide more complete medical assessment and treatment consistent with their training and that of other primary healthcare providers.

He went on to say that as the law in Idaho stands at present, before the passage of this proposed legislation, they are unable to perform many of the diagnostic and treatment procedures they were trained to provide. They are committed to improve this circumstance through support for the establishment of a uniform Code of Ethics, assuring physician competence and education. He believes this is best done through a state regulated licensing and monitoring body.

He listed these frustrations. (1) They are trained in various imaging and diagnostic techniques, but unable to order them (2) they are trained in minor, superficial surgical procedures, but unable to perform them, (3) they are trained to interpret blood tests and values, but unable to order them, and (4) they are trained to diagnose contagious, infectious and reportable diseases, but unable to confirm them through state-of-the-art laboratory methods. They are unable to provide the comprehensive care that they are trained for and that their patients deserve.

In conclusion, he requested that this legislation be endorsed to create for

Idaho a Board of Naturopathic Medicine to oversee the standards, scope of practice and code of ethics of what they maintain to be a separate, distinct and very timely medical alternative for the citizenry of Idaho.

See Attachment #2 for complete testimony.

Michele Morgan, Ph D., a homeopathic doctor and President of Idaho Coalition for Natural Health. She has been in private practice here in Idaho for four years.

She represents herself and the statewide non-licensed practitioners and Idaho citizens in the Coalition for Natural Health. She explained that they co-authored this bill and support Senate Bill 1158. It has been challenging to come to a place of negotiation of how naturopathic physician licensure could work in Idaho without restrictions on the existing natural health care community.

Richard Markuson, Executive Director of the Idaho State Board of Pharmacy.

He explained their involvement with this bill. Regarding the formulary council, he recommended that the full committee be there when any formulary is set.

Senator Werk to clarify. You are saying that no matter how the formulary council is composed, that if a decision was made about adding or removing a drug from the formulary, that everyone should be at the table. **Mr. Markuson** said that was correct.

Senator Compton asked Mr. Markuson if he was comfortable that what would be approved by the formulary council for these folks to prescribe would be in line with the health and safety of the citizens of Idaho. **Mr. Markuson** said that as the committee was set with two pharmacists, which are the drug experts, and one M.D., he was comfortable.

Nancy Kerr, Executive Director of the Idaho Board of Medicine. The Board remains neutral on whether licenses are issued to naturopath or people who practice naturopath medicine. She explained that when someone practices medicine in Idaho, they are licensed with the Board. If they practice chiropractic medicine, they are licensed with another board. They are not licensed by exception. They do not regulate naturopathic physicians. There is an exception within their practice act that says they will not pursue a licensure action or a criminal action against somebody who only uses natural elements. Regarding the question of N.M.D. and N.D., she researched the American Association of Naturopathic Physicians and also looked at the sister states who also license naturopaths. There is usually one title with title protection or group of titles. There is no question by those titles who licenses and who regulates those people. There are some minor concerns about this bill. She questioned the need for a formulary council if there is a drugless treatment. She questioned why there was not a criminal background check in this bill.

Kris Ellis returned to close testimony. She called attention to a letter of support of this legislation from Laurence V. Hicks, D.O. (See attachment #3.) She explained the title issue with an example of the difference between optometrist and opthomalogist. As these different medical specialities have evolved, it is not always clear who does what. She said by enabling them to at least change the titles for each group, licenses for one group, and not for another, they are beginning to develop the differentiation for the public. As it stands now, there is no differentiation. There is not a requirement for an actual background check, but there is a requirement that they cannot have a criminal record.

Senator Kelly asked about the exemptions on page 3, line 50. She wanted an explanation of the following subsection:
(2) The practice of naturopathic medicine by an individual employed by the federal government while the individual is engaged in the performance of duties prescribed by the laws and regulations if the United States;
Ms. Ellis replied that it referred to studies and research.
Senator Kelly referred her to the following subsection which she didn't think made sense:
(5) A person engaged in good faith for religious reasons as a matter of conscience;
Ms. Ellis replied that these were all taken out of the Medical Practice Act; these are the same exemptions that are in the Medical Practice Act as it reads now and that is where we got this list.

Pro Tem Geddes explained that this was interesting to him because they had almost come full circle. For those who have been here in the past and seen the turmoil and frustration that this type of legislation has caused, there is now a potential for progress to be made. He said that he had never seen the perfect legislation and this may have to be tweaked, but if the committee votes against this, it is saying no to progress, improvement, and to the protection of the people who depend and trust whoever provides their health care. There is a distinction, probably not as good as they would like to see it, but at least when someone goes to a provider if they aren't a licensed doctor, they will know that. He went on to say that if this didn't go forward, he didn't know how many decades they would come back and fight over this same issue. He highly recommended that the senators pass this legislation.

MOTION: A motion was made by **Senator Brandt** to send S1158 to the Senate Floor with a Do Pass recommendation. The motion was seconded by **Senator Coiner.** A roll call vote was taken for the motion. Senators Compton, Broadsword, Brandt, and Coiner voted Aye. Senators Darrington, Keough, Werk and Kelly voted Nay. Senator McGee was absent. There were 4 Ayes, 4 Nays, 1 Absent.

SUBSTITUTE MOTION: A substitute motion was made by **Senator Werk** to send S1158 to the 14th order for amendment of the formulary council. The motion was seconded by **Senator Keough**. A roll call vote was taken for the substitute motion. Senators Compton, Broadsword, Darrington, Brandt, and Coiner voted Nay. Senators Keough, Werk, and Kelly voted Aye. Senator McGee was absent. There were 3 Ayes, 5 Nays, 1 Absent.

AMENDED SUBSTITUTE MOTION: A motion was made by **Senator Coiner** to hold S1158 in committee and bring it back at the Chairman's discretion for reconsideration. The motion was seconded by **Senator Kelly**. A roll call vote was taken for the amended substitute motion. Senators Compton, Broadsword, Keough, Coiner, and Kelly voted Aye. Senators Darrington, Brandt, and Werk voted Nay. Senator McGee was absent. There were 5 Ayes, 3 Nays, 1 Absent.

ADJOURN: The meeting was adjourned at 5:06 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, March 7, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator Brandt/excused
CONVENED:	Chairman Compton called the meeting to order at 3:12 p.m.
GUESTS:	See the sign-in list.

H190 **Relating to Reimbursement Rates Under Medicaid**; amending Chapter 1, Title 46, Idaho Code, by the Addition of a New Section 46-118, Idaho Code. - **Representative Janice McGeachin**/Representative Kathie Garrett

The purpose of this legislation is to direct the Department of Health & Welfare to implement a methodology for reviewing and discussing reimbursement rates for private businesses providing services.

Representative McGeachin explained that H190 would not set reimbursement rates for private business providers into statute or by rule, unlike many other medicaid services where payments are established by rule. H190 is a management tool which will help the department better manage the growing cost of medicaid and provide the legislature pertinent information when considering budgetary requests.

Senator McGee asked if the department had made an official stance on by supporting or opposing this legislation. **Representative McGeachin** said she had asked for input from the director of Medicaid and he did give some recommendations for some language change which they did incorporate.

Leslie Clement, Acting Deputy Administrator, Medicaid Division.

She explained that generally speaking this bill is a good thing. The providers should know the methodology behind reimbursement rates. It does not guarantee a rate. The medicaid division is making sure they have qualified providers and that they are approving appropriate services. They did have an opportunity to look at the draft bill before it was printed and for the most part they don't have concerns.

She responded to the committee's questions about quality concerns:

- The department has a decision unit to fund a mental health credentialing system that is essential to assuring that Medicaid is paying for services provided by qualified providers.
- The department acknowledges that there is a significant concern about the growth and quality of services identified in this bill and that it is worthwhile to focus on these services in order to better manage the budget.

See Attachment #1 for complete testimony.

James Whittaker, President of Idaho Residential Supported Living Association
He explained that in the past they had not had the ability to have these rate structure conditions fairly evaluated by the Department of Health and Welfare. He urges support of H190. See Attachment #2.

Lee Barton, owner of Riverside REHAB.
He explains that this legislation would help to address inflationary pressures for that portion of the private sector whose income is tied to Medicaid reimbursement rates. H190 would provide that structure and he urges the committee to support the bill. See Attachment #3.

Kay Wortley, Program Administrator at Meridian Developmental Center (a private developmental disability agency) serving participants in the Treasure Valley for almost 20 years. We serve 35 individuals.
She explained that during the last several years their monthly expenditures have continued to increase while the income has remained the same. She said their total insurance costs have increased by 75% since 1999 and their personnel costs have increased over 20%. There are few ways that they can decrease expenses that would not adversely affect the people they serve or their employees. She has had to give employees a cut in pay, raised their insurance deductibles and other cost saving actions which is not good business practice and often leads to staff turnover. She believes developmental disability agencies do provide the right service in the right place at the right price. They are held to the highest standards in the service to their participants and yet they are asked to continue to operate on a 1999 income. She urges the committee to pass H190.

Senator Compton asked Ms. Wortley what she would suggest to improve the program that would control costs. **Ms. Wortley** does not have an answer since costs have skyrocketed and provider agreements have increased because of new services that are being provided. Some services have been provided without really looking at the cost to the state and the department of health and welfare. She feels they should have the opportunity to sit down at the table and negotiate fairly and be able to stay in business.

Shelley Holmes, Program Director for Tomorrow's Hope, a Developmental Disabilities Agency (DDA) in the Treasure Valley. She represents Idaho Association of Developmental Disabilities Agencies

(IADDA) and supports H190. She explained that this bill would provide a methodology to ensure regularly scheduled review and adjustment of reimbursement rates for services rendered. IADDA would be willing to participate actively in the development and implementation of this process. See Attachment #4.

Ms. Holmes also provided a letter that Mr. Russell C. McCoy, President of Idaho Association of Developmental Disabilities Agencies sent to Mr. David Rogers, Administrator of Medicaid on July 28, 2004. See Attachment #5

Senator Coiner asked how many organizations in Idaho were providing these services. **Ms. Holmes** said the last count that she saw was 75 or 79 DDAs. **Senator Coiner** asked what oversight was provided by Health & Welfare. **Ms. Holmes** said that for the adult services all were prior authorized by the department; for children services, they develop the implementation plan and get physicians orders. There are different layers depending on the age group.

ADDITIONAL TESTIMONY: An email was received in support of HB190 from **April K. Crandall**, LSW and President of Mental Health Providers Association of Idaho. See Attachment #6

Testimony was received, but not heard, from **Steve Hansen**, President of Case Management Association of Idaho, also in support of HB190. See Attachment #7

Testimony was received, but not heard, from **Dana M. Demeule-Benkula**, Owner and Program Director for Delta Developmental Services. She is in support of HB190. See Attachment #8.

MOTION: A motion was made by **Senator Darrington** to send H190 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Keough** and the motion was **carried by a voice vote**. **Senator Keough** will sponsor H190 on the Senate Floor.

Chairman Compton said there would be no meeting on Wednesday and the Committee would reconvene on Thursday, March 10 at 3:00 p.m.

ADJOURN: The meeting was adjourned at 3:55 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Tuesday, March 8, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator McGee
CONVENED:	Chairman Compton called the meeting to order at 3:07 p.m.
GUESTS:	There was no sign-in list for March 8.

HCR 15 Stating Findings of the Legislature Concerning the Healthy Well-Being of Idahoans, and encouraging Greater Public Awareness of the Health Problems Associated with Obesity and the Benefits of Regular Exercise and Sound Nutrition in Ensuring Wellness and Longevity. - Presented by Lyn Darrington

She explained that this bill is to raise awareness and encourage people to move more. Idaho has the 29th highest level of adult obesity and overweight levels for high school students in the nation. It is basically a resolution to increase awareness and approved by the Legislation.

MOTION: A motion was made by **Senator Broadsword** to send HCR 15 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**. Senator Broadsword will sponsor the HCR 15 on the Senate Floor.

H235 Relating to Licenses for Drinking Water Operators; Amending Section 54-2411, Idaho Code, To Provide Reinstatement, Fee and Examination Requirements for a Drinking Water Operator Whose License has been Canceled for a Period of More than Two Years. - Presented by Rayola Jacobsen, Bureau of Occupational Licenses

She explained that the license requirement for drinking water operators license had been moved to the Bureau of Occupational Licensing and limits reinstatement of cancelled drinking water operator licenses to two years. This provision is a requirement from the Environmental Protection Agency.

MOTION: A motion was made by **Senator Coiner** to send H235 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Keough** and the motion was **carried by a voice vote**. **Senator Kelly**

and **Senator Coiner** will co-sponsor H235 on the Senate Floor.

MINUTES: None to approve

ADJOURN: The meeting was adjourned until Thursday, March 10 at 3:00 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, March 10, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

MEMBERS ABSENT/ EXCUSED:

CONVENED: **Chairman Compton** called the meeting to order at 3:15 p.m.

GUESTS: See attached sign-in list

H191 **Relating to the Practice of Physical Therapy**; Amending Section 54-2213, Idaho Code, To Set Forth Continuing Education Requirements for Renewal of Active Licenses; and Amending Section 54-2214; Idaho Code, To Require Proof of Completion of Continuing Education Requirements. - **Jeremy Pisca**, attorney with Evans - Kane law firm and representing Idaho Physical Therapy Association.

He explained that this bill extends the continuing education requirement to physical therapists. It would require 32 hours of continuing education every two years. This bill has been negotiated with the Board of Medicine. See Attachment #1.

MOTION: A motion was made by **Senator Broadsword** to send H191 to the Senate Floor with a Do Pass recommendation. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**. Senator Broadsword will sponsor the bill on the Floor.

H192 **Relating to the Practice of Physical Therapy**; Amending Section 54-2203, Idaho Code, to Define the Term "Licensure Board" And to Remove Language Referencing an Advisory Committee; Amending Sectio 54-2205, Idaho Code, To Provide for the Physical Therapy Licensure Board; and Amending Section 54-2219, Idaho Code, to Provide References to the Licensure Board. - **Jeremy Pisca**, attorney with Evans - Kane law firm and representing Idaho Physical Therapy Association.

He explained that currently in law the physical therapists have an advisory committee which serves as advisor to the Board of Medicine. Other health care professional organizations also have an advisory committee except it is called a licensure board. This would change the name from Advisory Committee to Licensure Board. This bill also extends the membership of the board from three members to five members, which would allow a physical therapist assistant member to sit on the board and the other would add a public member, a consumer protection type. The last thing it would do is to increase the kind of job responsibilities that the committee has to the

Board of Medicine. For example, they would be evaluating the curricula of nationally accredited schools for the board, recommending and reviewing fees that would be assessed to the physical therapists, and establishing and helping to recommend and put into place administration rules. The Board of Medicine would be the final decision maker. See Attachment #1.

MOTION: A motion was made by **Senator McGee** to send H192 to the Senate Floor with a Do Pass recommendation. The motion was seconded by **Senator Kelly** and the motion was **carried by a voice vote**. Senator McGee will sponsor the bill on the Floor.

S1158 **Relating to Naturopathic Physicians** - **Kris Ellis**, representing Idaho Naturopathic Physicians Association.

First, **Senator Darrington** wanted to ask a question of Rayola Jacobsen. He asked how this bill fits into the scheme of your licensure board. **Ms. Jacobsen** said this would be an addition to the 18 different boards. She said though it would not be overwhelming, in her brief cursory overview of the bill, it would be somewhat difficult to administer due to the number of exemptions. She has not had the time to go over this bill in depth. **Senator Compton** asked if rules might fill in the pieces left out by statute. **Ms. Jacobsen** said that was possible.

Ken McClure, representing the Idaho Medical Association (IMA) explained that the IMA was troubled by this bill and he had some suggested amendments for the committee to consider if they chose to send this to the 14th order. The IMA does not like the fact that people that have not had the training can do things that they shouldn't do and feel that the bill as written will not be for the benefit of public health. See Attachment #2 for recommended changes.

Kris Ellis explained, in answer to **Senator Compton's** question about their meeting with the IMA, that the Medical Association is trying to solve a problem that they have not been able to solve for a long time through this legislation. By trying to fix that, they will not be able to get their bill through the way it was intended. There may be people calling themselves doctor who don't have any education, but there are also naturopathic doctors who do have education and it may not be along the lines of a naturopathic physician where they want to do surgery or prescriptions, but they had training 20 years ago. She does not feel it is their board's responsibility to decide who and what that is. She feels it is their board's duty to license those as physicians who want to be able to prescribe diagnostics as they are trained and do minor office procedures.

She went on to add that she would like to make a couple of points that Mr. McClure addressed in his amendment.

1. <u>The title</u> - There are states that do not allow people to use the term doctor unless they are a licensed medical doctor. The Medical Association could have run a bill to do that, but did not. In 1993, the Medical Association incorporated the exemptions that are before you today.
2. <u>How to regulate these boards</u> - There are other boards, i.e., phone, electrical, that are allowed through state statute to do civil proceedings. The Medical Board is only allowed to refer to the prosecuting attorney in the county in which the complaint is received.

She believes that IMA is trying to solve their problems through their bill.

Ms. Ellis introduced the two amendments that they had worked on since the last meeting.
54-5109.(2) line 33 and 54-5110 - see Attachment #3

Senator Werk asked if the wording that Mr. McClure submitted in his amendment regarding 54-5102. Definitions (8) gave Ms. Ellis cause for concern. **Ms. Ellis** said as the representative for the Naturopath Physicians, that does not cause a problem. She explained that the Coalition for Natural Health and their attorney had worked on that definition. Her understanding was that the definition in the Medical Practice Act was not all encompassing of the Smith ruling. By incorporating what the law presently states today and permitted by Idaho law; that would include the constitutional law that is set by that wording of the Supreme Court.

Ms. Ellis added that the exemptions were the same as they have been in previous years and she thought that since they were okay with the Bureau of Occupational Licenses last year, that they would be this year.

A letter from American Specialty Health was received in support of SB1158. See Attachment #4.

Michelle Morgan, President of the Idaho Coalition for Natural Health. She stands in favor of the bill that they co-authored with the Idaho Association of Naturopathic Physicians and the two amendments that were discussed and agreed upon.

MOTION: A motion was made by **Senator Keough** to send S1158 to the 14th order with amendments. The motion was seconded by **Senator Werk** and the motion as **carried with a voice vote**. Pro Tem Geddes will sponsor the bill on the Floor.

MINUTES: A motion was made by **Senator Broadsword** that the minutes of Thursday, January 20, 2005 be approved as written. The motion was seconded by **Senator Darrington** and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Kelly** that the minutes of Monday, February 21, 2005 be approved as written. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Werk** that the minutes of Thursday, February 17, 2005 be approved as written. The motion was seconded by **Senator Keough** and the motion was **carried by a voice vote**.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, March 14, 2005

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

MEMBERS ABSENT/ EXCUSED:

CONVENED: Chairman Compton called the meeting to order at 3:04 p.m.

GUESTS: See the attached sign-in list

Chairman Compton welcomed Senator Fred Kennedy to the Health and Welfare Committee Meeting.

HCR12 Stating Findings of the Legislature Concerning a Modification to Existing Home and Community-Based Developmental Disabilities Waiver Programs - **Leslie Clement**, Acting Deputy Administrator, Division of Medicaid

This House Concurrent Resolution requests that the Legislature encourage the Department to amend its medicaid Home and Community Based (HCBs) waiver programs to include a self-directed or self-determination model of services and supports option. This model would give eligible adults greater control and choice over their Medicaid services. This resolution incorporates a test program that will apply initially to the developmental disabilities program. It is contingent upon the Centers for Medicare and Medicaid approval. The model also would provide an evaluation component to determine the model's effectiveness and potential. Preliminary work on the proposed model began last year through a federal grant. The Department will report the results of the test program to the Legislature along with recommendations for further legislative action.

The development cost of this new service delivery model is covered under a $500,000 Independence Plus Grant awarded by the Centers for Medicare and Medicaid. The three-year grant began last year and runs through September 30, 2006. The Developmental Disabilities Council provides matching funds of $65,000 over the life of the grant. The Grant pays for infrastructure development and implementation of the test program. Costs are estimated at $150,000 in this second year of the grant. After the test program has been completed and evaluated, the Department will provide the findings and projected costs of future implementation to the Legislature for further legislative action.

For Ms. Clement's complete testimony, see Attachment #1

Marilyn Sword, Executive Director of Idaho Council on Developmental Disabilities.

She referred the Committee to the handout, Attachment #2, which describes what this resolution does and why it is needed. She then recognized Senator Fred Kennedy and Representative Kathie Garrett from the task force that worked on the report in a very involved way. She also described the comprehensive report on the process that the Idaho Council on Developmental Disabilities and the Idaho Department of Health and Welfare have gone through. The "Self-Determination in Idaho Report" is Attachment #3. Last year there were many advocates who made a presentation to Legislators early in the Legislative Session about the impact of this on themselves and their families and communities. These self-advocates have been receiving training and are going out and providing education and information to other consumers. She said this was an exciting shift in the service delivery model and philosophy that recognizes the whole person, rather than the person as a menu of services. She believes that partnership and collaboration has made this work well. She asked that the Committee support HCR12.

Kristyn Herbert, Self-Advocate for Idaho Council on Developmental Disability. She explained that this new self-determination movement would give people with disabilities more freedom and independence. They could hire who they want instead of depending on whoever the agency sends them. This waiver would allow them to select the services that they need. She asked that the Committee support HCR12.

Senator Fred Kennedy spoke in favor of HCR12. He explained that a couple of years ago this Committee approved HCR29, which is the instrument that makes it possible to adopt HCR12. This Legislature found that people with developmental disabilities should have the authority to provide input into how the substantial sums of money were being spent on their livelihoods. Their participation would probably provide them with better treatment and allocate funds that would be more productive than without their support. He said he thought this was the most important task force he had served on in the two years he had served in the Senate. He asked that the Committee support HCR12.

In answer to **Senator Compton's** question to simplify the issue, **Senator Kennedy** replied that there was a substantial amount of funding through the existing Medicaid programs that are allocated for expenditure for the benefit of developmentally disabled people. In the past, the money has been spent in a manner that was without the input of those recipients being supported by this money. Programs, in many cases, were spent unnecessarily. This program attempts to bring the people that need this assistance into the program so they can provide input to the program administrators on what they feel is in their best interest. Some money is not being spent as effectively as it could be.

MOTION: A motion was made by **Senator Werk** to send HCR12 to the Senate Floor with a Do Pass recommendation. The motion was seconded by **Senator McGee** and the motion **carried by a voice vote**. Senator Werk will sponsor the bill on the Senate Floor.

H195 Relating to the CHIP Plan B Health Insurance Program; Amending Section 56-239, Idaho Code, To Provide Legislative Intent Regarding the CHIP Plan B Program, To Provide that the Director Shall Establish a Reserve and To Provide for Reports by the Director of the Department of Health and

Welfare Regarding the CHIP Plan B Program. - **Representative Janice McGeachin**

The purpose of this legislation is to direct the CHIP B Advisory Board to establish an annual reserve and to provide for reports to the Joint Finance-Appropriations Committee and the Senate and House of Representatives Health and Welfare Committees. There is no fiscal impact to the general fund.

Representative McGeachin referred the Committee to the spreadsheet of the federal match. (See Attachment #4). She is concerned about a reduction in insurance tax revenues. She believes that more people are dropping insurance, not just health insurance, for the simple fact that they can't afford it anymore. This will affect a source of funding that would go into the CHIP Plan B program. This management policy would help to prevent a situation where the House and Senate Health & Welfare Committees have to make decisions to remove people from programs because the costs have outgrown the source of funding. She asked for support of H195.

This legislation sets aside some reserve for protection of someone on the CHIP B Program against a catastrophic claim.

Senator Keough asked for a chart that would show what premiums have been historically. **Representative McGeachin** did not have a chart showing those premiums, but she did have the current revenues and estimated future revenues going into the fund in the form of excess payments. **Senator Compton** said that this chart shows a pretty healthy balance and it is also a fairly new program. **Representative McGeachin** said she was being proactive.

Senator Dean Cameron opposes this H195. There are some technical issues in this bill. "Excess premium tax" is not a defined term in the bill or in current statute. The CHIP B program is funded with 25% of all premium tax above $55 million. That level was established as a perspective level out into the future when the $55 million was hit, it would free up 25%. The high risk pool has another funding formula of 25% of all premium taxes above $45 million. Next the bill points out that <u>these programs are funded by excess premium taxes imposed on health insurance companies offering health insurance policies in the state of Idaho</u>. The premium taxes that are collected are on all insurance companies regardless of whether they sell health insurance, life insurance, liability insurance, auto insurance, etc. In the handout that Representative McGeachin provided, the revenue estimate is based on the future and there is no projected increase in premium taxes. The expenditure estimate is based on the federal match, but this is not discussed. The Access Card and the CHIP B Program, together with the adult Access Card actually use two titles of the code; (1) Title 19, which is the traditional 70/30 match, and (2) Title 21, which has been the traditional 80/20 match. The federal government has not talked about reducing the Title 21 match. The only discussion has been about Title 19. The enrollment for this programs is increasing, but slower than anticipated. He does not see the problem as Representative McGeachin presents it and does not believe this bill will save any dollars.

Representative McGeachin closed with a comment that the Senate and

House Health and Welfare Committees would be able to see the revenues and where the expenditures are each year by receiving this report.

MOTION: A motion was made by **Senator Broadsword** to hold this in Committee. The motion was seconded by **Senator Keough** and the motion was **carried by a voice vote**.

DISCUSSION Proposed AARP Prescription Drug Card Bill - **Steve Tobiason**

The Committee was given a copy of the revised S1089 (see Attachment #5). The interested parties have met several times. The pharmacists objected to the mail order process that was in the original bill and that has been removed. Another issue discussed with the pharmacists was one of price. They felt the price they were being reimbursed was not necessarily a fair price. As that was discussed in more detail, the price component broke down in two ways; brand name drugs pricing and generic drug pricing. They agreed to the medicaid pricing for brand name drugs which is AWP minus 12% plus $4.94, which has been changed in the revised bill. In the draft provided, for generic drugs, the average acquisition cost to the pharmacist and a mark-up of 60% plus a dispensing fee of $5.94. The pharmacists have not accepted the generic drug pricing.

The original bill had a 250% poverty level. This revised version has been changed to 300% poverty level. The pharmacists do not support this. Mr. Tobiason said they were asked by the Committee if these two types of programs, Affordable RX and patient assistance programs, could stand side by side. He said they looked at blending the two and that is what has been done in this revised bill. They could not meet the interests of all concerned entities.

Senator Compton said that he was bothered by the pricing that was written, although they had talked about negotiating the price. He also mentioned that the $4.94/$5.94 pharmacist fee was higher than other states. He has been bothered all along by the fact that Health and Welfare doesn't have a system that will implement this program. They plan to go out for a RFP, so it will be sometime before that would even be in place. The cost of $10 per person to join the program even though the system wouldn't be operable seems to be another problem.

Senator Werk said he would like to hear the pharmacists point of view.

JoAn Condie, CEO of Idaho State Pharmacy Association
The pharmacists were never comfortable or satisfied with having the price attached to the medicaid fee, which is what it was before. When they sat down with AARP, they first agreed with the original reimbursement that was mentioned at the table, but AARP said they couldn't do that with generic drugs. AARP continued to call their person in Maine to find out what was a reasonable reimbursement.

Bill Roden, representing PhRMA
We have not been able to come to an agreement with AARP. There are a number of things that were changed without being discussed at the meetings such as going from 250% of federal poverty level to 300%. This bill requires that if a patient assistance program is used, the manufacturer has to pay a fee of $2,500 to the state of Idaho to register. This was done without any discussion with the manufacturers. If one renews the program

for another year, there is another charge for $1,000. If a pharmacist today would handle a pharmaceutical assistance program, that may make them automatically a member of the program for purposes of the rebate because of the way the bill is written. Conversely if they don't participate in every patient assistance program that is offered by the manufacturers that are registered in this state, they would not qualify for the remainder of the program, which is unfair to the consumer. Mr. Roden does not believe they have arrived at an agreeable solution.

MOTION: A motion was made by **Senator Coiner** that we not send S1089 (Revised) to a privileged committee to be printed. The motion died for lack of a second.

MOTION: A motion was made by **Senator Werk** to send S1089 (Revised) to a privileged committee to be printed. The motion died for lack of a second.

MOTION: The original motion was made by **Senator Coiner** that we not send S1089 (Revised) to a privileged committee to be printed. The motion was then seconded by **Senator McGee**.

DISCUSSION: **Senator Keough** said she was troubled by this bill. She had the impression that the interested parties had all agreed on the legislation and now she felt that it had been misrepresented to her. She would support Senator Coiner's motion.

Senator Coiner said that the purpose to have inexpensive medication was good, but he did not think this legislation was good.

The motion was **carried by a voice vote**. **Senator Werk** voted No.

RS15166 **Senator Compton** asked the Committee to review the copy of RS15166 in their packet and decide if it should be sent to Judiciary Privileged Committee for printing.

MOTION: A motion was made by **Senator Brandt** to send RS15166 to Judiciary Privileged Committee to print. The motion was seconded by **Senator Broadsword** and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Coiner** that the minutes of Tuesday, March 8, 2005 be approved as written. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:35 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Tuesday, March 15, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	**Chairman Compton** called the meeting to order at 3:19 p.m.
GUESTS:	See the attached sign-in sheet.

Revised H143

Senator Compton advised the committee that this was no longer Revised H143. He explained that when it came to him from the House, it had some real problems. This bill initially cut DEQ out of any authority over the expansions of sewer systems or water systems. It was created by two organizations, an engineering firm and by some of the larger cities that have their own public works department. Counties do not have those facilities and rely heavily on DEQ for their advice and council in looking at those systems. They also got a letter from EPA saying that if this original bill was passed, that DEQ would very likely lose their primacy over water and sewer systems. So various components of the bill were asked to get together and come up with something that everyone could live with. So the revision RS15163C2 is before the committee today.

RS15163C2

Relating to the Department of Environmental Quality - **Ken McClure**, represents the American Council of Engineers Companies.

This legislation defines the responsibility of the Department of Environmental Quality to review and approve plans for sewer and water systems. There is no fiscal impact to the general fund.

The addition of “and design” should be added to page 2, line 38. Section 2 is an uncodified statement, it will not go in the code, but will be law. It is different than a statement of legislative intent.

Senator Broadsword mentioned that in the original bill there was concern that there was no description of the type of engineer that could look over the plan. She asked if that had been corrected. **Mr. McClure** said that there was a requirement that some plans would need extra review either by the owner, a regulated public utility, or DEQ.

This RS compared to H143 does define specifically what can be done without the need for review which are simple line extensions for sewage and water.

Senator Werk asked about the new wording on page 2, beginning with line 40 through 45, and the statement that the department shall not substitute its judgment for that of the owner's design engineer concerning the manner of compliance with design standards. This seems more policy oriented in terms of how one entity judges another. **Mr. McClure** replied that this was one of the core concepts of this piece of legislation.

Senator Kelly asked the chairman what the procedure was. She wondered if they were expected to review the rule and then vote on whether to send it to privileged committee to print. Was a majority vote needed, or unanimous. **Senator Compton** said a majority vote was sufficient.

Senator Coiner wanted to know what the problem was and what they were trying to solve. **Mr. McClure** said that the sponsors of H143 were responding to a concern that the review of things at DEQ was both unnecessary, costly, and timely. Some thought that there were some things that didn't need this level of review. **Senator Coiner** asked if this was a statewide, or local problem. Senator Compton called Toni Hardesty to the podium.

Toni Hardesty, Director of DEQ.
She explained that there were some areas in the state where this concern was expressed more than in others. Sometimes when there are big projects in the que to be reviewed, smaller projects are behind those so there is a wait. It has occurred in the Boise regional office primarily due to the tremendous amount of growth.

Senator Compton asked if she thought this had taken away some of their authority or hurt the well being of the state. **Ms Hardesty** said that the projects that have been sorted out for the city to be able to review are appropriate and they are comfortable with the revision.

Senator Darrington asked if the small cities that have budgetary and manpower limitations could request DEQ to approve the project, rather than contract with a private engineer. **Ms Hardesty** replied that this was correct.

Senator Kelly asked if the engineering review that DEQ does on the plans and specifications was the same as the review of a qualified licensed professional engineer. **Ms. Hardesty** said that it should be.

Senator Coiner asked if legislation was necessary. **Ms. Hardesty** said that she had drawn up a proposal to fix the problems.

There was more discussion among the committee to clarify some details. **Ms.Hardesty** said she heard some skepticism regarding her proposal as to whether the agency would follow through on the commitment that she

had outlined and that there needed to be legislative language to memorialize that to make that happen. She suggested that one look at the other entities to weigh in on that issue. With or without legislation, the commitments she made in the letter would move forward. **Senator Kelly** had several concerns about the bill and asked if this had been reviewed by the Attorney General's office and if they were comfortable with it. **Ms. Hardesty** replied that they had reviewed it and were comfortable with it.

MOTION: A motion was made by **Senator Brandt** to send RS15163C2 to privileged committee to print and from there send to the floor with a Do Pass recommendation. The motion was seconded by **Senator Broadsword**.

DISCUSSION: **Senator Darrington** made the comment that the bill may not go from privileged committee to the floor, it may come back here. **Senator Coiner** said he thought the people that wrote the bill had come up with an excellent solution and were looking for a problem. He doesn't like it and is reluctant to send this to print as some towns support DEQ and want them there. He thinks this could be solved without legislation. **Mr. McClure** spoke up and said there were people present ready to testify and answer Senator Coiner's questions.

SUBSTITUTE MOTION A substitute motion was made by **Senator Keough** to send RS15163C2 to privileged committee to print and return to Committee for full hearing. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote.**

PRESENTATION David Lehman - To speak on Medicaid

He talked about Medicaid at the federal level and some of the concepts that were being looked at in the Governor's office. The President's proposal was approximately a 60 billion cut in federal support for the medicaid program over a ten year period. That equates to about 7.6% to a 7.3% annualized growth. It shifts federal costs to the state.

The vast majority of the cuts that the President and both houses of Congress have proposed deal with intergovernmental transfers. They take funding from other programs, non-general fund programs, sometimes called provider taxes. This means they go out and extract a tax from a provider, match that tax dollar against the federal dollars, bring that money back to the state and then they revert the tax that was levied back to the provider and they keep the federal dollars in the state coffers and use those to supplant state funds for other programs.

Idaho has very small dollars that are generated through intergovernmental transfers. One example is a school based program where schools provide the matching rate and federal dollars are matched with school based funds and support program.

A new proposal has come to the Senate by Senator Gordon Smith of Oregon. It proposes no cuts to Medicaid, but implements a commission of congressional representatives and representatives from the state and providers. That is one of the plans that is on the table in the U.S. Senate.

He would prefer that the growing concerns that are at the federal and state levels with Medicaid are addressed. Mr. Lehman said that some of the concepts and principals need to be looked at in regard to Medicaid reform. He thinks that momentum is growing at the federal level that would allow states to essentially act as laboratories for reform in Medicaid programs. Not so much as a broad federal restructuring of the program, but more so targeting states and implementing what he called a super waiver. It would allow states to reorganize their medicaid systems in unique ways in order to address what would be the future needs of the medicaid system.

There is an opportunity to take a system that has a broad approach in addressing the health care needs of some very distinct populations; poor children, disabled individuals, and the frail and elderly. The medicaid system for the past forty years has been a one-size-fits-all approach. That doesn't take into account the waivers that have been put in place to help address the needs of these individuals. The challenge is that waivers must be applied for and justified. There is a disincentive for reform in the medicaid system. He would advocate that some principles are considered, like providing the dignity of the individual.

ADJOURN: The meeting was adjourned at 4:38 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Wednesday, March 16, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Chairman Compton called the meeting to order at 3:05 p.m.
GUESTS:	See attached sign-in list
MINUTES:	A motion was made by **Senator Kelly** that the minutes of Thursday, January 20, 2005 be approved as written. The motion was seconded by **Senator Broadsword** and the motion was **carried by a voice vote**.
MINUTES:	A motion was made by **Senator Coiner** that the minutes of Thursday, February 24, 2005 be approved as written. The motion was seconded by **Senator Broadsword** and the motion was **carried by a voice vote**.
H230	Relating to Air Quality; Providing a Statement of Legislative Intent; Amending Section 39-115, Idaho Code, To Revise Permit Requirements for any Major or Minor Air Pollution Source in Idaho, To Provide Rules, To Provide Stringency, to Define Terms and To Provide Application to Fugitive Emissions. - **Dick Rush**, Idaho Association of Commerce & Industry. Under Idaho Law, air pollution source permits are to be issued in conformity with federal programs established under the Clean Air Act. Recently, the U.S. District Court for the District of Idaho interpreted portions of the Idaho air rules in a manner which exceeds federal requirements. This legislation requires the Department of Environmental Quality to adopt rules that conform the state law to the Clean Air Act (and its regulations) with respect to the scope of "regulated air pollutants" included for pollution source permit applicability. The Air contaminants included in determining whether pollution source construction or operating permit requirements apply for programs administered by the Department must be consistent with, and no more stringent that, the air contaminants included for such permitting determinations under the Clean Air Act and its regulations. Further, the legislation conforms state law to the federal Clean Air Act and regulations so fugitive emissions are not included in calculations to determine the applicability of construction or operating permit requirements unless

expressly designated under the Clean Air Act by the EPA Administrator.

There should be no fiscal impact as this clarifies that the permitting requirements DEQ has used traditionally are correct. Not passing this legislation (or something similar) will cause a significant increase in permitting costs at DEQ.

Mr. Rush began by saying what this bill was not.

- It was not to derail the Idaho Conservation League and the Idaho Dairymen's Association.
- It was not an attempt to sidestep the federal Clean Air Act or weaken Idaho's air quality laws and regulations.

See Attachment #1 for Mr. Rush's testimony.

Trailer bill to H230
This legislation adds to the definition of regulated air pollutant the authority for the Department of Environmental Quality to adopt and implement the permit to construct programs required by Sections 112(g) and 112(I) or the Clean Air Act for major and minor sources of Hazardous Air Pollutants (HAPs).

Secondly, in subparagraph (c), deleting the term "expressly" from both sentences, and adding the implementing regulations to the Clean Air Act reference, allows the Department of Environmental Quality to meet the minimum federal requirements in regard to the permit applicability treatment of fugitive emissions.

The trailer bill was negotiated by Dick Rush, Martin Bauer of DEQ, Krista McIntyre of Stoel Rives and representing IACI, plus a couple of folks out of Region 10, DEQ. At an earlier meeting those people were there as well as Alan Prouty, IACI.

Senator Keough asked if there was a copy of the trailer bill. **Mr. Rush** said he did not have a copy of the RS, but he had a copy of the negotiated version that was given to Legislative Services. **Senator Keough** said she would be interested in seeing the trailer because it may make a difference in how H230 is implemented and the Committee should be looking at it in context with H230. **Mr. Rush** said she was correct and that it may answer some of the complaints that they may have received about the bill. **Senator Coiner** stated that if the H230 bill was flawed and needed a trailer bill to fix, why not amend H230 rather than have an additional bill to fix what is being presented. **Mr. Rush** answered that in meetings with DEQ and industry representatives there was discussion about the different options and because this was a last minute change, a trailer bill seemed to be the proper way to proceed. Once it gets to the amending order, there are some amendments suggested that might change what is trying to be accomplished with the negotiations with DEQ. This new trailer bill makes it very clear what the change to the bill would actually be. **Senator Compton** commented that the procedure would be to bring both the bill and the trailer back to the Committee to look at unless it doesn't pass out of here. **Senator Compton** asked who had

been privy to the negotiations to the trailer bill. **Mr. Rush** said that the meeting included Krista McIntyre from Stoel Rives representing IACI, himself, Martin Bauer of DEQ plus a couple of folks out of Region 10 at DEQ. At an earlier meeting those same people attended plus Alan Prouty, Chairman of the IACI Committee, and the attorney general assigned to DEQ. **Senator Darrington** asked about the construction of 39-115, (1)b (i), (ii), (iii), (iv) which refers to the federal code. It appears that (ii) refers back to (I) and (iii) and (iv) refer to Part D's of a subchapter I and part C or subchapter I. His question was why they weren't combined into one paragraph. **Mr. Rush** said that the lawyers had worked on this language so he would defer to Krista McIntyre to discuss the legal construction of this legislation. **Krista McIntyre**, environmental attorney, in answer to the question, said that "regulated air pollutant" is defined differently under the federal Clean Air Act for each of these different uses. She said they didn't have the benefit of saying here's the term and here's what it means, but to get it right they had to break it apart so that it means what it should mean with respect to each different type of permit that the state has authority to issue. **Senator Keough** asked Mr. Rush if Section 1, lines 8 through 19 was new language being inserted in this bill. **Krista McIntyre** replied that the Statement of Intent was new. **Senator Werk** asked Mr. Rush if there was a written copy or citation of the opinion by Judge Winmill. **Mr. Rush** did not have copies for the Committee.

Joanna Kirkpatrick, a resident of Boise, testified that she believes in conserving land, air, water, and health and opposes H230. She thinks this is a special interest bill which will allow industrial strength dairies to pump more toxic ammonia and other pollutants into the air and water.

Rich Carlson, attorney for Idaho Rural Council, explained that science has confirmed the magnitude of emissions coming from mega-dairy operations. The State of Idaho has some regulatory mechanism to control them, but the industry wants those regulations changed. He urges the Committee to not allow that to happen and to vote no on HB230. He believes this bill would remove the ability of the DEQ to take into account fugitive emissions from these large industrial site operations. For his complete testimony, see Attachment #2.

Jack Lyman, representing the Idaho Mining Association, explained that this bill reaches far beyond the dairy industry. This bill would reaffirm commitment to the stringency provisions that are in Idaho Code and not allow a federal judge's decision to make a different decision. It should be a legislative decision, not one that is dictated by a federal judge. The mining industry also generates fugitive emissions and must meet requirements that are imposed.

Martin Bauer, Air Quality Division Administrator of Department of Environmental Quality.

The legislation before the Committee along with the trailer bill does the following:

1. It corrects the definition of "regulated air pollutant" to be consistent and meet the minimum requirements of the federal Clean Air Act regulations.

2. It clarifies when fugitive emissions are to be counted and made permit applicability consistent with the federal Clean Air Act and its implementing regulations.

Both bills are needed to accomplish this fete. Passing one without the other will only create an inconsistency with the federal regulations. The trailer bill is needed to include two legal corrections to HB230 to ensure that the legislation is at least as stringent as the federal regulations in the Clean Air Act.

Many questions have been asked about how this will affect dairy industry and the lawsuit filed by the Idaho Conservation League (ICL). The ICL and the Idaho Dairymen's Association (IDA) have jointly requested negotiated rulemaking to implement the applicability thresholds agreed to by ICL and IDA into a permitting regulation that would require Best Management Practices (BMPs) above those thresholds. This negotiated rulemaking will result in a permit by rule, a general permit, or any other mechanism to implement the BMPs on dairies above the thresholds.

He also stated that H230 nor the trailer bill will affect Idaho's Air Toxic Pollutant Program. The program will be implemented as it always has been.

In conclusion, DEQ supports H230 only with the passage of the trailer bill.

Senator Kelly asked if DEQ could accomplish the same legal affect through rulemaking. **Mr. Bauer** said this could be done through rulemaking. **Senator Kelly** clarified that this could be done in negotiated rulemaking where all parties were present to make sure that their needs were met. **Senator Coiner** asked if this legislation would also require rulemaking. **Mr. Bauer** said it would. **Senator Compton** reiterated that this could be done by rulemaking and would also require rulemaking. DEQ has been at the table as this has been formulated and as you have stated before, the trailer bill must accompany the original bill to satisfy the Department needs. He asked if Mr. Bauer was pleased with what this accomplishes. **Mr. Bauer** replied that with the agreement that they have with the IDA and the ICL requesting joint negotiated rulemaking, this fix is needed, especially the regulated air pollutant issue. **Senator Compton** said that they were concerned when they see changes that affect different industries and there is suspicion that some industries are running rampant and are self-serving and others will be left out. He asked Mr. Bauer if he saw any holes in this legislation that would be a problem for the department to enforce the laws. **Mr. Bauer** said there were no holes in this legislation or in the negotiated rules that are coming up. The one risk is what might happen in negotiated rule. **Senator McGee** asked if the DEQ supports the legislation with the trailer bill. **Mr. Bauer** said that was correct. **Senator Darrington** asked if the federal law or regulation was changed regarding his reference earlier on the "regulated air pollutant." It would appear to him that if that changes, it would still be covered by this legislation because it conforms to those definitions in the federal code of "regulated air pollutant." **Mr. Bauer** said that was not correct; that (i) - (iv) were exactly what the federal regulation was now and if that definition was

changed in their regulations, a state statute change would be needed to be consistent with federal regulations. **Senator Kelly** asked that since there was a choice to do this by rule or by statute, if there was some kind of urgency to this since if it did pass it would become effective July 1. From a timing perspective, how did Mr. Bauer see those two potential routes going. **Mr. Bauer** said that before it would become final it would come back to this legislation which would take a year. However, none of those changes would affect the federally approved state implementation plan so the rules on the federal books would remain the same until they submit the changes. He said that getting it changed today wouldn't change the federal rules for several years. There's quite some time between when the rule is negotiated and passed to when it finally encompasses the federal system and the state system. **Senator Kelly** confirmed that there was not an urgent need to get something changed immediately. **Mr. Bauer** said that it was no more urgent than they could rush to rulemaking. **Senator Werk** asked how often the feds might change their rules necessitating the department to return to the Legislature to change statute. **Mr. Bauer** said that didn't happen very often. The last time was in 1990.

Bill Eddie, Attorney, representing Idaho Conservation League, opposes this bill. He explained that DEQ has been entrusted to make sure that everyone was complying with the federal requirements and to ensure that the health and welfare of the citizens were being protected. All states have unique concerns and for that reason he respects the concerns about stringency. He showed a chart to show the pollutants that with this bill would escape regulations. He believes that this bill will weaken regulations and he would prefer negotiated rulemaking. He is concerned that this bill will remove the tool that the State has to control ammonia-based compounds.

Senator Werk wanted to make sure he understood what he had said since someone earlier had talked about fugitive dust and the concern that the decision of the judge was going to affect that. He said that according to Mr. Eddie's testimony the dust issue is dealt with in separate rules, not something to bring into the discussion today. **Mr. Eddie** said that was correct. He thought it was a distraction because there was a separate tool, Rule 650, to use as an enforcement action for fugitive dust.

Senator Compton called on Mr. Bauer to help understand the conflict of statements that have been made. **Mr. Bauer** said that they didn't believe that this legislation touched the State Air Toxic Program which will continue to exist as it does today. It is not a fugitive only program and never was. It is a stack program, and provides a screening ability for new sources coming into the area and ammonia is one of those toxins from stack sources that would still be regulated. **Senator Compton** asked for a definition of "stack." **Mr. Bauer** answered that these are fugitive emissions that can't reasonably go through a stack. **Senator Compton** referred him to Mr. Eddie's chart that outlined a lot of things that wouldn't be regulated because of this proposed law. He asked Mr. Bauer if this was true. **Mr. Bauer** said that the pollutants that were listed in 585 that state only air toxins and the half pollutants and all the criteria which will

still be regulated may or may not be regulated through the PCT program, probably not all; halves will, criteria will, but the toxic air pollutants will not, and never were.

John McCreedy, Attorney for Amalgamated Sugar Company, recommends that H230 be adopted. He explained that under Judge Winmill's decision if a facility emits the toxic air pollutant that is on DEQ's list, an operating permit or a permit to construct would be needed even though under federal law and DEQ's current program a permit is not required. The statement by ICL that the permit program is not really a stringent program is not true.

He urges the Committee to not decide to do this by negotiated rulemaking and not get the Legislature involved. There is no certainty that the negotiated rulemaking process is going to be timely or will produce a good result. This bill provides a result that DEQ has said is precisely the same as the federal regulations. Ms. McIntyre, Mr. Prouty, members of IACI, IDEQ, EPA have worked diligently over the last couple of weeks to get that result.

He went on to say that, in disagreement with Mr. Bauer, if there is a legislative or regulatory change at the federal level to the definition of "regulated air pollutant," DEQ would not have to come back to the Legislature to again amend the definition of "regulated air pollutant." This issue was incorporated by the drafters with the applicable federal regulations in each section of H230 that defines "regulated air pollutant," so as the federal law changes, so will the state with regular rulemaking.

In conclusion, **Mr. McCreedy** made a point regarding Judge Winmill's decision that this was a separation of powers. The judge made new laws and he legislates because DEQ's regulations were unclear. The judge interpreted them to the best of his ability but he created a new program that DEQ didn't intend, a program whereby if you have fugitive emissions or toxic air pollutants, you need a permit, even though it is not necessary under federal law. He legislated that it was up to this body to correct that issue.

Senator Coiner said that from earlier testimony, everything that was accomplished by this legislation could be accomplished by rulemaking. He wondered why Mr. McCreedy thought this bill would be simpler. **Mr. McCreedy** replied that this piece of legislation provides the template for that regulation. This legislative body will say these are the regulated air pollutants under state law, consistent with federal law; and will now adopt regulations consistently. A lot of unnecessary, wasted time during that negotiated rulemaking process will be done away with because the framework will already be there.

Senator Werk asked Mr. McCreedy if this legislation didn't pass would there be a burgeoning bureaucracy at DEQ and would those costs not be covered. He said Mr. McCreedy had also indicated that industry didn't pay enough during the permitting process to cover the costs that DEQ had for providing the permit oversight. **Mr. McCreedy** replied that like any

state agency, IDEQ was strapped. With a limited budget, they could only cover so much ground. The industry fees that were paid during the permit program were negotiated and were fairly consistent with the budget that DEQ requires.

Senator Compton said that last year DEQ had an agreement with Amalgamated Sugar that requested that if they controlled these pollutants and build this kind of smoke stack, they would not ask for more. He wondered how that had worked out. **Mr. McCreedy** said that it had worked well. He said they had a good relationship with DEQ, had annual meetings, had kept their commitments. He brought up another point that if they were required to obtain permits beyond that which DEQ ever intended, that original agreement would need to be revisited. **Senator Compton** said that he recalled they had agreed to spend a lot of money to meet the requirements of DEQ.

Mr. McCreedy stated that since the Clean Air Act was adopted in 1990, Amalgamated Sugar Company had spent between one and two million dollars getting permits for the three plants that operate in Idaho. He stated that there had been an exhaustive effort in applying for and obtaining those permits and meeting with DEQ on multiple occasions with revisions of the permits and negotiations of conditions that apply. Those permits regulate the very pollutants that DEQ is required to regulate under federal law.

Ed Smith, from Filer, Idaho, opposes H230. He stated that this bill "cuts the legs out from under" the agreement between the ICL and the Dairy Industry. As he understands the bill and how the rules are interpreted by the court, that fugitive emissions can be from an open field as opposed to a smoke stack. There are not very many cattle operations that have smoke stacks. They need to be regulated because of the health hazard that is emitting from them and to do otherwise is not responsible for the citizens of Idaho. Through Judge Winmill's decision, fugitive emissions could be applied to dairies. He believes that it is imperative that the agreement holds and that DEQ can make rules to make that enforceable.

Senator Compton called Mr. Bauer to the podium to answer how this would cut the legs out from under the dairy group. **Mr. Bauer** said that what that comment meant was that if DEQ continues to try and write a permit fix for a dairy and goes through the rules and this bill passes, it will have to be decided whether they are fugitive or stack emissions. If they are fugitive, they don't count, and if they don't count, they won't trigger the permit threshold. That's the statement that says it will "cut the legs out from under the dairies." His vision on how this negotiated rulemaking is going to go is that they will pull it out of that scenario and use the applicabilities that have already been determined and agreed to by ICL and IDA. The rules now will say "if you are a dairy, you have an open lot and are above X amount of cows, these are the BMPs that need to be imposed." The rule will not require them to calculate the emissions any more since that was agreed to between the ICL and IDA. That pulls it away from the ability to be undercut by H230. If it is left under the permit to construct rules, then this H230 comes into effect, and the dairies will fall out. If the dairies are pulled out from the construct rule and write a

separate rule, then H230 doesn't come into play. The paperwork for this is signed and going forward beginning in April.

Senator McGee had a question to Mr. McClure. He asked if the dairy industry had committed to go into negotiated rulemaking with the DEQ and all of the players to continue that process. **Mr. McClure** said that was true.

Senator Keough asked Mr. Bauer what legally binds the dairy group, ICL and DEQ to continue through their agreement. **Mr. Bauer** said he did not understand the legalities, but he would try to keep everybody at the table. **Senator Keough** asked if it was true that if H230 passes, the legs would be cut off of the settlement agreement that got the dairies and ICL together at the table with DEQ. She continued that since they have this agreement and are moving forward under this rule process, it would be okay to pass H230 and the trailer bill because that work and agreement would still happen. She also thought he just said that nothing legally binding would keep everyone at the table. **Mr. Bauer** said that was right. **Senator Keough** said that then if H230 is not passed, they are bound to moving forward because of the settlement. **Mr. Bauer** said that was right.

Senator Kelly said that if they did not pass this bill, there would be some kind of a hammer over the dairy industry to continue with a BMP getting in place and at the same time a separate rule could be negotiated that would address the problems that many of the other regulator industries are trying to address with this statute. **Mr. Bauer** said that was correct.

Senator Werk said that he was confused that Mr. Bauer had first said he supported the legislation with the trailer bill and then he had talked about negotiated rulemaking. Now he hears Mr. Bauer saying that to pass the bill, they are in a less secure position in getting negotiated rulemaking done in both areas. He wonders why DEQ would want to support something that would put them in a less capable position. **Mr. Bauer** said he was between a rock and a hard place. He needed to fix one issue and he didn't want to lose the momentum and work that had been done on the other issue. Somehow they needed to meet. They need to fix the regulated air pollutant and to get some of these other sources out of the permitting group that were never intended to be there, that he doesn't have money or resources for. He could do those two things better through rulemaking, but if H230 is the solution and the trailer bill passes, that works as well. Neither are the best, but both would work. **Senator Darrington** said that in Section 107D, where stringency is discussed, negotiated rulemaking could resolve in a regulation that is more stringent than the federal regulation if the conditions that are in 107D are met. He anticipates that to be a possibility with regard to negotiated rulemaking with or without the bill. **Mr. Bauer** said that was correct.

Claudia Haines, from Meridian, Idaho, stated that she would like this bill to <u>not</u> be sent to the Floor. She suggested that this problem be solved through rulemaking and set this bill aside for a year. There are too many negotiations and too much at stake. She has documentation showing that families have been getting sick from sprays, etc. and this bill will stop

DEQ from doing the job that needs to be done.

Lynn Kammermeyer, Director of Program Services for the March of Dimes Idaho Chapter, opposes H230. She referred to reproductive hazards and teratogens which cause birth defects. She said that according to interpretations of this bill, certain sources of mercury, which is their main concern, may not be tracked in this state and would then pose a threat. See her complete testimony, Attachment #3.

Senator McGee asked for someone from DEQ to comment on the mercury issue. **Mr. Bauer** stated that EPA had just recently promulgated mercury emissions from coal power plants and that is their first stab into tracking mercury emissions. He was having a hard time making the connection with dairies and mercury. **Senator Keough** clarified the question that it wasn't necessarily dairies, but that the argument had been made that this bill would somehow loosen DEQs ability to track elements such as mercury that may be emitted. **Mr. Bauer** said that was being done through EPA rules.

Mr. Rush closed his testimony with these comments. He said this was not a PCT issue and that kind of rulemaking would take a long time. If the dairy industry doesn't live up to the commitment that Mr. McClure just gave you, this Legislature would deal with that appropriately without taking it out on the rest of the industry.

Lauren McLean, Community Conservation Associate with Idaho Conservation League, opposes this bill. She stated that there were many pollutants that were not going to be tracked with this new legislation. She provided information of their concerns regarding the changes in ammonia and fugitive emission regulations and the affects of this bill on regulating toxic air pollutants in Idaho. See her complete testimony including the list of these pollutants in Attachment #4. She recommends that DEQ analyze who is potentially affected by the Winmill ruling and rulemaking, or the Legislature could address that problem next year.

A letter was received from **Rick Waitley**, Executive Director of Food Producers of Idaho, Inc. The Food Producers of Idaho, representing several agricultural organizations throughout the state, is asking for support in passing H230. See Attachment #5.

MOTION: A motion was made by **Senator McGee** to send H230 to the Senate Floor with a Do Pass recommendation and with the trailer bill in tact. The motion was seconded **Senator Brandt**.

SUBSTITUTE MOTION: A substitute motion was made by **Senator Kelly** that H230 be held in Committee with the direction to DEQ to proceed with rulemaking. The motion was seconded by **Senator Coiner**.

DISCUSSION: **Senator Werk** said it was apparent that the best solution seemed to be in negotiated rulemaking where the entities could be at the table together. He thought from Mr. Bauer's testimony that negotiated rulemaking would give more flexibility and so it would seem best to allow this bill to be held. He would support the substitute motion. **Senator Compton** said he thought Mr. Bauer said this bill would give him the framework with which

to work from. **Senator McGee** said that he heard Mr. Bauer say that DEQ supported the bill. **Senator Coiner** said that he thought it was a messy situation with a bill before them that was requiring a second bill (trailer) to straighten it out. He thought it should be amended to one single bill and they haven't even seen the trailer bill. He thinks setting it aside for awhile and letting negotiated rulemaking take place would accomplish more. **Senator Keough** stated that she did not have enough factual knowledge in which to make a decision and she would be voting to hold it in Committee. **Senator Darrington** suggested that the issue was stringency. He believes stringency is a huge policy decision on the part of this Legislature. **Senator Werk** added that the fiscal committee had an unwritten policy to have both sides come together and today there is conflicting testimonies. **Senator McGee** said that was why he asked Mr. McClure if he was going to be in the negotiated rulemaking process where all sides would be together to discuss the issue.

SUBSTITUTE MOTION: There was a roll call vote for the substitute motion that was on the floor. Senators Keough, Coiner, Werk and Kelly voted aye. Senators, Compton, Broadsword, Darrington, Brandt, and McGee voted nay. There were four ayes and five nays. The vote to hold H230 in Committee failed.

MOTION: There was a roll call vote for the original motion that was on the floor. Senators Compton, Broadsword, Darrington, Brandt, and McGee voted aye. Senators Keough, Coiner, Werk, and Kelly voted nay. There were five ayes and four nays. The vote passed to send H230 with the trailer bill attached to the Senate Floor with a Do Pass recommendation.

ADJOURN: The meeting was adjourned at 4:46 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Thursday, March 17, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Chairman Compton called the meeting to order at 3:08 p.m.
GUESTS:	See the attached sign-in list.

Chairman Compton changed the order of the agenda and began with the trailer bill to H230.

RS15168 Relating to Air Quality, **Dick Rush**, Idaho Association of Commerce & Industry

This legislation adds to the definition of regulated air pollutant the authority for the Department of Environmental Quality to adopt and implement the permit to construct programs required by Sections 7412(g) and 7412(i) (1) of the Clean Air Act for major sources of hazardous air pollutants (HAPS).

Secondly, in subparagraph (c), deleting the term “expressly” from both sentences, and adding the implementing regulations to the Clean Air Act reference, allows the Department of Environmental Quality to meet the minimum federal requirements in regard to the permit applicability treatment of fugitive emissions.

Mr. Rush stated that this was the companion bill or trailer bill to H230 that they promised to bring to the Committee yesterday. This bill was created as a request from the Environmental Protection Agency to make a change to H230. **Senator Compton** reminded the Committee that this was a print hearing and would return at the beginning of next week.

MOTION: A motion was made by **Senator McGee** to send RS15168 to privileged committee to print and return to this Committee for a full hearing. The motion was seconded by **Senator Broadsword**.

There was a discussion of rules for handling this bill and whether it needed a unanimous vote to pass. **Chairman Compton** said he would take it to leadership if the vote was not unanimous.

There was a roll call vote on the motion. Senators Compton, Broadsword, Darrington, Brandt, Keough, and McGee voted aye. Senators Coiner, Werk, and Kelly voted nay. There were 6 ayes and 3 nays.

H247 Relating to Speech and Hearing Services - **Jeremy Pisca**, representing Idaho Speech-Language and Hearing Association and **Rayola Jacobsen**; Bureau of Occupational Licenses

Hearing Aid Dealers and Fitters are licensed under the Bureau of Occupational Licenses to fit and dispense hearing aids. Audiologists, if licensed under the same act, may also fit and dispense hearing aids. This legislation repeals the Hearing Aid Dealers and Fitters Act and replaces it with the "Speech and Hearing Services Practice Act" and would include hearing aid dealers, audiologists and speech-language pathologists. With the exception of audiologists who fit and dispense hearing aids, neither audiologists nor speech language pathologists are currently required to be licensed by the state of Idaho.

This legislation sets forth the licensing requirements, defines terms and practice, and establishes the Speech and Hearing Services Licensure Board. The program is designed to be self-funded from licensure fees and will not impact the general fund.

Mr. Pisca gave the Committee some history of this legislation for background. In the state of Idaho today, people who fit and dispense hearing aids or sell hearing aids are licensed to do so. Audiologists and speech pathologists are not licensed, per se. However, audiologists who fit and dispense hearing aids must be licensed under the Hearing Aid Dealers and Fitters Act. He said that left a small segment of audiologists that were fitting and dispensing hearing aids regulated, but the vast majority of their practice was not regulated.

He stated that the Licensure Board will consist of seven members appointed by the governor. Three members of the Board shall be speech-language pathologists, two members shall be audiologists, one member shall be a hearing aid dealer and fitter, and one member shall be appointed from the public at-large. A quorum of four members of the Board shall consist of one audiologist, one speech-language pathologist, the hearing aid dealer and fitter and the public member.

While drafting this legislation, he was approached by the Idaho School Board Association and the Idaho School Administrators Association. They employ Speech Language Pathologists (SLPs) in the school districts and were concerned that they might have a dual licensure standard. If working in the school district, one must pass a certification process which is called a Pupil Personnel Certification. It requires educational standards such as continuing education and the renewal of a certificate. In the public school setting, there is already an element of consumer protection because there is a way to remove bad or fraudulent actors or people that are incompetent to be practicing. He continued that they worked with the school boards and administrators and exempted out SLPs who are working full time with the school district.

For his complete testimony, see Attachment #1.

Mr. Pisca pointed out that the audiologists were required to pass an examination in audiology approved by the Board as a qualification for licensure. **Senator Werk** asked for clarification if the Board was going to provide the structure and framework for the examination. **Mr. Pisca** said that was correct. **Senator Werk** asked if that examination would come to the Legislature or would the rules that would be promulgated simply provide the framework for the Board to work and develop their examinations. **Mr. Pisca** stated that any administrative rule had to pass through the Legislature before it could be adopted unless it was a temporary rule. He said there was no intent to do a temporary rule. **Senator Werk** said that since the hearing aid fitters and dealers were concerned about the lack of a practical test being done, he was wondering if Mr. Pisca could provide enough information and possibly a commitment that the intent of the Board and this legislation was that there would not be a substantial difference between audiologists and hearing aid fitters in terms of fitting and dispensing hearing aids. **Mr. Pisca** said that the exam standards were currently in the law and would mirror that, but it would be a Board process so he could only assume that it would be the same as it is today.

Roger Hales, Attorney representing the Bureau of Occupational Licenses and the Board of Hearing Aid Dealer and Fitters.

He stated that he had worked with both of these groups and that they were in support of this bill. He had tried to "shuffle" the deck to include the Board of Hearing Aid Dealer and Fitter law into this proposal.

Senator Werk asked if he anticipated that the new Board would be sensitive to the need to have audiologists take the same kind of examination if they were to fit hearing aids . **Mr. Hales** expects the Board to be sensitive to the concerns about the testing of hearing aid dealers and fitters and to make sure that audiologists who are licensed are also competent to fit and dispense hearing aids.

Cliff Green, representing the Idaho School Board Associations, is in support of this bill and congratulates the Speech and Hearing Association for the time that they took to sit down with the School Board trustees, school administrators, and staff to work through all the issues they had with the first draft of this bill.

Senator Werk asked why they would exempt the audiologists in schools. **Mr. Green** replied that SLPs working in schools were the only speech and language pathologists that had any rules and regulations put on them. Secondly, school districts have a hard time finding SLPs who will serve in the school district. They don't want to make it harder or more expensive for a person who wants to work in that capacity for the school.

Cindy Olsen, an Audiologist here in Boise, representing the Idaho Speech and Hearing Association, encourages the Committee to support H247. She is in favor of licensure for audiology, speech pathology, and hearing aid dispensers to ensure that consumers of those services are

being cared for in a safe and effective manner. For complete testimony, see Attachment #2.

Ron Dike, Secretary/Treasurer of the Idaho Hearing Aid Society, feels that this bill needs a total rewrite. As H247 now stands, it is very anti-dealer so he does not support the bill. For complete testimony, see Attachment #3.

Senator McGee asked why his organization was now opposed to this bill since it had been worked on for several months and had passed the House. **Mr. Dike** said they had been opposed to it and that the survey that Ms. Jacobsen of the Bureau of Occupational Licenses only asked if they were in favor or opposed to audiologists being able to dispense without being licensed through the bureau and they had said no. He did not consider that to be enough posting of the bill, which is why they were reacting this late.

Senator Werk asked if the audiologists decided to opt out of licensing, which they are doing now under the existing Board, that they might pull out altogether and the hearing aid dealers and fitters would be left with a much smaller pool of people to pay the cost of a Board that is already $26,000 in debt. Since costs were a concern, how did he justify that concern. If they did leave, fewer people would be paying higher dollars. **Mr. Dike** said that the debt was incurred mainly over two investigations of hearing aid dealers and fitters in Eastern Idaho and the investigations went on and on and he didn't think a conclusion was ever reached. He would refer further questioning to Randall Brown.

Randall Brown, from Idaho Falls and representing Idaho Hearing Society, states his main objection to the bill is that speech pathologists are in with the audiologists. For complete testimony, see Attachment #4.

Senator Werk suggested that if the audiologists decided not to participate with this group, that would leave them with roughly half (about 50) of the current membership to pick up the overall costs for licensing. That would double the fees besides making up for the extra $26,000 debt with 50+ people. He wondered if they didn't want someone to help clean up the mess in their Board and lower the license fees. **Mr. Brown** said he thought the deficit in the Hearing Aid Dealers and Fitters Board had been corrected by an increase in the fees. He added that since 1992, the Board was comprised of two traditional dispensers, one dispensing audiologist, one otologist and one consumer. He stated that in his opinion they had been run by the audiologists since 1992 and a particular non-profit in town has exerted a big influence over the Board and the Bureau. That is where he believed this deficit came from.

Senator Werk asked if he had any knowledge about the two investigations that Mr. Dike mentioned. **Mr. Brown** said he did have knowledge about one of them because it was against him. **Senator Werk** asked Mr. Brown if he was as concerned about the testing of audiologists as other hearing aid dealers and fitters have mentioned. And did he also have some peace in knowing that Legislature would have

some input and that this Board would most likely require that kind of practical fitting testing that they would be doing for hearing aid dealers and fitters. **Mr. Brown** said he heard those intentions of the Board, but intentions were one thing and what was actually done was another.

Mike Friend, Executive Director of the Idaho Association of School Administrators, is here today representing Superintendents and Directors of Special Education. They are the people that hire Speech Language Pathologists and Audiologists in school districts. He supports H247 as amended. Dr. Green, who spoke earlier, shared with the Committee that his group was involved with negotiating the exemption as it appears in the amendment. He stated that was the critical piece to them in terms of providing the ability of school districts to continue to employ speech language pathologists, audiologists and aids as appropriate working under the rules established by the State Board of Education.

Dan McCuskey, Hearing Aid Specialist of Canyon Hearing Aid Center, has been dispensing hearing aids for 36 years, grand-fathered in under the first law. He stated that there were some good things with this bill, but also some inequities as evidenced by some testimonies today. He explained that there were several areas of concern and they were listed on Attachment #5.

Senator Werk asked him about (1) the licensure board being of equal composition and (2) the connection with what the exam would look like. Senator Werk senses that under the current composition of the Board, he feels he might not get the representation to get what he wants. If there were a change to the Board to two members from each profession, does he think many of his concerns would be allayed under that kind of licensure board. **Mr. McCuskey** replied absolutely. **Senator Werk** continued by asking if he would have a level of comfort if assistive devices and noise protection ear plugs were added by amending the definitions. **Mr. McCuskey** said that would also help.

Kim Ennis, SLP with Boise School District, states she supports H247.

Kim Ruckles, SLP with Communication Pathways and Idaho University, is in support of this bill.

Jacquie Elcox, a hearing aid dispenser and owner of Treasure Valley Hearing. She also employs audiologists. She feels this bill was put together very hastily on both sides. In this bill there were investigations and penalties that cover speech pathologists and audiologists, but don't address dispensers. She stated that she had a problem with the non-profit situation. In current law, non-profit entities (such as Elks Rehabilitation) have specific ways that they can dispense hearing aids. In the new law there is nothing about the non-profit, which could put private companies out of business.

Rayola Jacobsen, Bureau Chief of Bureau of Occupational Licenses. She stated that surveys were sent to the 111 licensees. The number of surveys that were returned was 65. The question was asked "Are you in favor of the legislation described?" The number that said yes was 39, the number that said no was 16. Some added comments, but some did not.

She explained that they had worked with these folks at length, had tried to reach out to the community and thought they had the best possible fix.

Senator Compton asked if she thought there was injury to this group that feels somewhat threatened by it. He also asked about the money that they owed and how that is being paid off. **Ms. Jacobsen** said that they tried to protect the rights of people who were already under licensure. She said that was why they involved as many of the Board as were appointed and to ensure that hearing aid dealers and fitters would not be subject to reexamination or any hardship. The hearing aid dealers and fitters would experience a reduction of their renewal fee if this bill passed. Addressing the second question, she said there had been a number of complaints on hearing aid dealers and fitters and they had been costly. **Senator Compton** said there were two other questions that were raised; the Board make-up, and the audiologist exam. **Ms Jacobsen** said they looked at the population segments that would be comprising the licensure base and drew three from the largest number, two from the second largest number, etc. To ensure that the hearing aid dealers and fitters would not be "overrun" by the Board, there must be a quorum for any measure to be enacted or for the Board to be in session. If the hearing aid dealers and fitters did not want to pass a measure, they simply walk out and there would be no quorum and the Board could not function. **Ms. Jacobsen** said regarding the second question, there would be some examinations and there would be some exemptions. The rules would come from the Board.

Senator Werk wanted to clarify to the audience that rules were never made in a vacuum. They involve many meetings and much notice. The rulemaking process is really involved and the extra step in the state is that they come back here and can be turned down so there is also protection.

A letter from **David R. Nielsen**, M.D., Executive Vice President and CEO of American Academy of Otolaryngology Head and Neck Surgery was received in opposition to several positions of H247. See Attachment #6.

Dennis Bell, Hearing Aid Specialist and a concerned dealer and fitter. He is supportive of the bill, but is concerned of the omissions, many of which were brought up in earlier testimony. See Attachment #7.

Jeremy Pisca in closing, said he was not sure about the non-profit issue. They had thought that it didn't make any sense to have it in there, but he would like to defer to Roger Hales regarding that question. **Mr. Hales** said that this would be an exemption to the requirement to have a license. The way this act is drafted it deals with the people that practice and need to have a license. This old exemption dealt with entities and basically said an entity could practice conditioned upon certain things. Mr. Hales read the statute in the current law 54-2902. *No state or local government entity or agency or other non-profit organizations shall engage in the practice of fitting of and dealing in hearing aids for compensation; provided, however, a hospital, as defined in section 39-1301, Idaho Code, may engage in the practice of fitting of and dealing in hearing aids for compensation if:*
(1) The hospital provides audiological services within the hospital; and (2)

The patient was referred to the hospital for audiological testing by a physician; and the fitting of the hearing aid is done by a natural person licensed pursuant to this code...
Mr. Pisca and Mr. Hales reviewed this section and thought it was unnecessary since this Act deals with licensing people, not entities.

Senator Werk said he thought the concern was competition. He went on to suggest that if Elks Rehabilitation chose to become a hearing aid fitting center, they could offer hearing aids for 30% less than private companies. He suspects that the people that have testified here today feel that without this section in code they are open to that kind of competition. **Mr. Hales** said that his concern was the protection of the public. They wanted to ensure that the people that engage in this kind of practice were licensed. He said in their analysis of that exemption it didn't make sense in that context, i.e., hospitals don't practice medicine, hospitals employ doctors who are licensed to practice medicine.
Senator Keough added that as a legislator, the issue for her was that they had done some "shuffling" and this section of code which was in there for a reason for a certain segment of a profession had fallen out with the shuffling. While it seemed not to be a big deal, and they could accomplish the end goal of protecting the public and making sure licensed and properly educated people were doing the right things, it probably would not have been a problem to leave it alone.

Mr. Pisca thought they had done the noble thing by suggesting that they all work together.

MOTION: A motion was made by **Senator Kelly** to send H247 to the Senate Floor with a Do Pass recommendation. The motion was seconded by **Senator Coiner** and the motion was **carried by a voice vote**. Senator Werk voted no. Senator Kelly will sponsor on the Senate Floor.

MINUTES: A motion was made by **Senator Kelly** that the minutes of Wednesday, March 2, 2005 be approved as written. The motion was seconded by **Senator Broadsword** and the motion **carried by a voice vote**.

MINUTES: A motion was made by **Senator McGee** that the minutes of Wednesday, February 23, 2005 be approved as written. The motion was seconded by **Senator Kelly** and the motion **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:53 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Monday, March 21, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Kelly
MEMBERS ABSENT/ EXCUSED:	Senator Werk - excused Senator Coiner
CONVENED:	Chairman Compton called the meeting to order at 3:12 p.m.
GUESTS:	See attached sign-in list

Chairman Compton gave some background for S1220. Some felt that the original bill was harsh and took DEQ out of the loop on many things. It was his understanding that all parties; the cities, counties, DEQ and the engineering community had come together in good faith. This Committee likes to see the invested parties come together and present something that makes sense to all.

S1220 Relating to the Department of Environmental Quality - **Ken Harward**, Association of Idaho Cities.

This legislation defines the responsibility of the Department of Environmental Quality to review and approve plans for sewer and water systems. There is no fiscal impact to the general fund.

Previously, there was a burden and responsibility on DEQ for review and approval which led, in some cases, to delays. This caused some concern to cities, counties and professional engineers that were working on jobs as a result to those delays and sometimes redundancy in review of plans. S1220 is a compilation of the invested parties.

Mr. Harward introduced **Jerry Mason**, Attorney from Coeur d'Alene and representing the Association of Idaho Cities. Senate Bill 1220 was a revision of Idaho Code 39-118, which is a statute that requires DEQ to review all plans for water and sewer systems. In the revisions, they have attempted to provide a more streamlined process without comprising the authority of the department and in the end comprising public health and safety. The bill adds several revisions to the existing test. See Attachment #1.

Toni Hardesty - Director of Department of Environmental Quality. She stated that this was a joint effort where the agency has worked with these groups revising the original bill to this new RS which accomplishes

speeding up the review process but at the same time protects public health and the environment. The agency supports S1220.

Senator Broadsword asked if the 42 days and 7 day limitation to resolve design issues was going to present any hardship. **Ms. Hardesty** said she did not.

Senator Kelly had asked at the print hearing whether or not the attorneys had an issue with the concept of DEQ "not substituting its judgment of the owner's design engineer." In her view that was a lawsuit waiting to happen. **Ms. Hardesty** said that they did have the Attorney General review that language to ensure that he were comfortable with it. **Senator Kelly** said that she thought perhaps the rules would better define the parameters of what exactly that kind of amorphous statement might mean.

MOTION: A motion was made by **Senator McGee** to send S1220 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Broadsword** and the motion was **carried by a voice vote**.

H265aa Relating to Assisted Living Facilities and Certified Family Homes - **Randy May**, Deputy Administrator Division of Medicaid.

The proposed changes will combine all the elements related to Residential or Assisted Living Facilities (RALFs) into a single chapter (Chapter 33) and all of the elements related to Certified Family Homes (CFHs) into a single chapter (Chapter 35). These changes will streamline the licensure/certification, survey, and oversight processes, eliminate duplicative/confusing guidance, de-mystify program requirements, and help provide for better health outcomes for residents requiring assisted living.

Under current state law, each RALFs and CFHs are required to be surveyed and licensed or certified annually. There are 270 RALFs in the state. Based on surveyor travel to/from the facility, actual survey workload, and report writing, this would require a total of 15.5 surveyors to meet minimum statutory requirements. Currently the Department's Facility Standards Bureau has 5.5 surveyors assigned to these functions. To meet current requirements this would require an additional annual cost of $630,000 compared to the proposed statutory changes that would require additional staffing costs of $271,200. The proposed changes will allow for $358,00 in cost avoidance. Additionally these proposed changes will allow for growth in the number of CFHs without the need for additional staff to meet statutory requirements, resulting in cost avoidance in each of the state's seven regions. For complete testimony and handout, see Attachment #2 and Attachment #3.

Senator Compton and **Senator Brandt** commends the departments involved in putting this bill together.

Senator Broadsword asked about Section 12 regarding the resident's failure to pay and she hoped that was not used frequently and that folks were given a chance to find a program that they could get on. **Mr. May**

said there were two different categories of payers in assisted living; one is a medicaid client and the other is private pay. The private pay will frequently spend through the resources they have and normally then change over to the medicaid funded category.

Michelle Glasgow, Executive Director of Idaho Assisted Living Association. The Idaho Assisted Living Association asks that you consider the needs of the residents in regard to quality of care, access to care, options in their care and affordability of care. She hopes the Senate will pass this statute with amendments that came out of the House. For her complete testimony, see Attachment #4.

Brian Elliott, President of the Idaho Assisted Living Association. Mr. Elliott stated that there were 124 units in Boise with special care as well as assisted living. He said that in February they hired an independent contractor to do a survey for quality control and when they arrived all of the information they needed was prepared in a certain area and they were able to go through it quickly. While he is sympathetic to those who wish to continue with unannounced surveys, he's also sympathetic to the process that the state has to go through to allow that 48 hours of preparation for them to come through the door. It is a great cost savings.

Cathy Hart, Ombudsman for the Commission on Aging. She explained that as an ombudsman, she was charged to advocate for the residents of assisted living and nursing homes. She was also a member of the 12 member task force that met. Assisted living is not just a housing arrangement for the elderly residents that live there anymore. They have needs for personal care and health care and many experience dementia related to Alzheimer or other similar illnesses. They have difficulty making day-to-day decisions let alone navigating contracts, plans of care, etc. The complexion of care has changed a great deal and health care in general has changed since the statute was developed in 1991 and amended in 1996. People who used to have extended stays in hospitals are now living in nursing homes and some of those move on to assisted living. They have had more complaints from assisted living facilities than from nursing homes.

The top three complaints were:
1. Problems with medication administration and organization
2. Problems with discharge and eviction
3. Problems with legal issues, such as powers of attorney, guardianship, and conservertorships.

Good oversight of this program is essential. The system is complicated and even if the resident has the good fortune of having a loved one to assist, they really can't be expected to navigate contracts and plans for the standards of care that the facility will follow.

She believes that H265 is a good answer to the program and provides protection and oversight that will give these vulnerable residents the good quality of life that they deserve.

MOTION: A motion was made by **Senator Broadsword** to send 265aa to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Brandt** and the motion was **carried by a voice vote**.

H188aa Relating to the Child Protective Act - **Representative Janice McGeachin**.

The purpose of this legislation is to add to state law the federal protections required under the "Keeping Children and Families Safe Act of 2003." There is no fiscal impact to the general fund.

Barry Peters, Attorney, representing ICHE/CHOIS. The bill that was originally presented to the House was drafted by himself and Representative McGeachin. As it was presented to the House Health and Welfare Committee some representatives from the State Department of Health & Welfare and also a representative from the Idaho Prosecuting Attorneys Association expressed some concerns about the language. They then met privately and came up with some language that was agreeable with all three of those parties. What is before the Committee today is the amendment to H188 and a product of that discussion. He stated that it takes a part of the original bill and replaces it in total. The bill requires that social workers who are involved in child protection cases must be trained to understand the legal and constitutional rights of the child, of the parents and of anyone else who is under investigation.

Senator Kelly pointed out that the addition of subsection (2), line 33 says that department employees shall advise the individual of the complaints or allegations made against the individual at the time of the initial contact. She asked what were the consequences if the department employees did not do that or did it insufficiently. **Mr. Peters** said that was exactly the concern that the Idaho Prosecuting Attorneys Association came forward with. They didn't want something that could be construed as an exclusionary rule and if there was neglect to advise them at some point then there could be "the fruit of the poisonous tree" (any evidence that falls out becomes inadmissable). He said that the Idaho Prosecuting Attorneys Association were satisfied that this language did not do that. **Senator Kelly** said that was a valid concern, but she was thinking more in terms of the consequences of the employee. **Mr. Peters** said there were no consequences other than a potential jeopardization of federal funding.

Representative McGeachin added that through the amendment and working with the members mentioned earlier, that it was not the responsibility of the CPS workers to protect the legal rights of those under investigation of child abuse, but the training curriculum would include the applicable federal and state laws. She said that to clarify the questions that were asked to ensure and protect Idaho's future of good management practices that are in the department now and continue to get those federal dollars.

Shirley Alexander, Child Protection Program Manager with the Department of Health & Welfare, said she was in charge of the training curriculum that has been referred to here. They have been using this curriculum since 1992 with the criteria that is set forth in the Child Abuse Treatment Act. Their plan was approved this year by their federal

partners knowing that they had this in the curriculum. It is extra and does not need to be in statute in order to get those funds.

Senator Compton asked if she felt it was necessary to institutionalize this. **Ms. Alexander** said they did not feel it was necessary to institutionalize this in statute. They were neutral on it and did not oppose it since it did not have any fiscal impact. This is not required statute for the funding.

Senator Brandt asked if this didn't secure it and make it one step closer. **Ms. Alexander** said they could show that it was in policy as well as in statute. **Senator Compton** asked if this put any undo boundaries or ask them to do things beyond capacity. **Ms. Alexander** said no, this was exactly what they were doing now.

MOTION: A motion was made by **Senator McGee** to send H188 as amended to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Brandt** and the motion was **carried by a voice vote**. Senator Pearce will sponsor the bill on the Floor.

H282 Relating to Determinations of Medical Indigency - **Representative Tom Loertscher**. The purpose of this legislation is to extend from three to five years the ability of individuals to pay medical expenses before the counties and the Catastrophic Fund are required to pay those expenses.

It is estimated that this measure will result in a combined reduction of two million in county property tax dollars and general funds; 60% being county funds and 40% being general funds.

Representative Loertscher said the counties became the payer of last resort when it came to medical bills and there were no resources from any other avenue. Over the years, these costs have escalated. In 1984, the original Catastrophic Bill, a totally county funded program, was passed. In 1988, legislation was passed that the state would be responsible for a portion of those catastrophic expenses. In 1996, recodification was done and that was when the three year time period was put in. He pointed out that this bill does not force anyone to pay a bill when they do not have resources to pay them. The only thing that does change is that if someone does have the ability, they will have more time to pay the bills. If there is a $5,000 bill, it would require about $150/month over three years assuming a 5% interest rate. When changed to five years, it would be about $94/month. It does allow people who want the dignity of paying their own way, and do not want to be declared indigent, the ability to pay those over a longer period of time.

Senator Darrington asked when a person was declared indigent and when the hospital was paid by the county. **Representative Loertscher** said that when the bill came to the county, they immediately make the determination whether they are going to pay or not. If it's determined that someone has the resources, under current law, to be able to pay that over a three year period, the county will not pay. If it is determined that they do not have the resources to pay that bill, no matter what the size, the county

will step in and if over $10,000 the Catastrophic Fund will step in. **Senator Compton** said that the way he understood it, the county didn't pay the bill until over a five year period the person was so indigent and had so little spendable income that they couldn't make the payment. The county will then pay the hospital at the medicaid rate. He asked if that was correct. **Representative Loertscher** said that was correct. **Senator Compton** said that was one of the subtleties about the indigent plan. If the county pays, they pay at the medicaid rate. The hospital is not obligated to settle the bill at the medicaid rate if they are being paid on the time pay basis. **Representative Loertscher** said that was right.

Senator Kelly asked if he could walk through what was happening now and what would change. **Representative Loertscher** explained that if someone incurred a bill of $5,000 at the hospital, either the individual applies to the county or in most instances there is the ability of the hospital to file an application on the patient's behalf. That would then go to the county and the county has a set time frame whether or not the county is liable to pay the bill. What determines whether or not they are liable is in code (and in this bill). Resources are defined under 31-3502.(17). Applicants have to fill out all the paperwork to show whether or not they have resources with which to pay the bill. If they don't have the resources to pay, the county will pay that bill.

Tony Poinelli, with IAC, stated that most everything had been covered. He did want to mention the process from a lien standpoint. There has always been a lot of discussion about the lien statute. For those individuals that would have the capability to pay over a five year period, there would be no liens put on property. The other thing is that dealing with the estimated impact, the two million dollars, it's either 60/40% or 70/30%, 60% for the benefit of the county, 40% to the state catastrophic fund. The same for the 70/30%.

Senator McGee asked if there was any idea how many people were participating in this program under the current law. **Mr. Poinelli** said that the state catastrophic fund this year would probably approve 1,000 cases. He thinks that number could be quadrupled from the county stand point.

Steve Millard, Lobbyist, representing IHA, said they were opposed to this bill. The first they heard of this bill was when it was introduced in a privileged committee across the rotunda 20 days ago. They did not have an opportunity to work with counties on it. They opposed it in the House, but it came out anyway. Their problem was not with the three versus five years. It was not negotiated with all parties. This was a take it, or leave it proposition. In 1996, when this law was recodified, they had worked hand in hand with the counties for months throughout the session until the bill was passed. They worked and negotiated everything including the three years.

When counties look at resources, if the person is unemployed, they look at possible future income and calculate it as a resource. If they are sent away because they are not indigent and could make $5 - $10 an hour, the hospital is stuck with them whether they get paid or not.

A protocol committee was created, a joint committee between the Idaho Hospital Association and the Idaho Association of Counties. That protocol committee deals with these kinds of issues, but it did not get a chance to do that in this situation.

Senator Compton said that Mr. Millard is wrong about counties determining the person's ability to pay as an estimate what the person could make as income. That is not in code, and is not true. They look at income. **Mr. Millard** replied that all counties do not do that, but it does come up. **Senator Compton** disagreed. **Mr. Millard** said there are 44 counties in the state and sometimes there are 44 different interpretations of the code. That's why they came up with a protocol committee.

Senator Broadsword said they had heard that the hospitals had quickly signed up folks for the indigent program so they wouldn't have put them on a payment plan. She asked if that was the case. **Mr. Millard** said you could probably find, as with the counties, some hospitals that did that, but he does not believe that happens often. **Senator Keough** asked if he had an issue philosophically with extending a payment period from three to five years and recognizing a patient's ability to pay. **Mr. Millard** said he did not have a problem philosophically. He said that this was asking the hospital to carry the paper from three to five years. The hospitals try to help patients get on plans if they can afford to pay and will sign them up with banks where they pay interest and can extend out to five years. The problem is the borderline folks that have a $10,000 bill that makes them indigent. **Senator Keough** asked if the hospitals had agencies that could work with them and make those arrangements and carry those finances over an extended period of time. **Mr. Millard** said they did and those were not indigent people, but people who could make the payments. **Senator Broadsword** asked how much have medical care costs risen in the past nine years. **Mr. Millard** said they had gone up quite a bit. He would like to strengthen the statute so that they know that all the counties calculate the income in the same way.

Robert Vasquez, County Commissioner from Canyon County. He stated that there was only one segment of the population currently in Idaho that gets their medical care for free. The hospital is not a lending institution, but also the counties are not an infinite source of revenue for the hospitals. He then gave an example of someone who owed $19,400, the three year payment would be $540/month and the five year payment would be $323/month. The hospital could charge interest and the counties cannot. The hospitals do not care where the money comes from as long as they get paid and they have often accepted the medicaid rate rather than nothing. He hopes that the Committee will send H282 to the Floor with a Do Pass. It will certainly help the counties and those individuals who are willing to repay their medical costs.

Senator Kelly asked for a response to the fact that the protocol committee was not consulted and the hospitals weren't included in the conversation preparing this bill. **Commissioner Vasquez** said he was not part of the group that drafted this bill and he did not know. **Mr. Poinelli** said that the protocol task force had not been included. **Senator**

Kelly asked if the hospitals were consulted and if not, why not. **Mr. Poinelli** said that the hospitals were not consulted.

Roy Eiguren, Attorney, representing St. Alphonsus. The question was asked what would be changed if in fact we had been consulted. He said he spoke with their financial affairs office and although they support this legislation in concept, they join the Hospital Association in opposing it at this particular point. The four issues to be resolved are:

1. Clarify that the ability to pay over five years is going to be calculated from actual current income.
2. Ask the counties in their determinations, to make allowances for living expenses that are realistic.
3. Would like language in code or protocol that would prevent a county from convincing a patient to withdraw an application for indigency.
4. Would like to have language in code or protocol in situations where counties refuse to schedule an interview with an applicant until the end of the sixty day window to apply for indigency.

Representative Loertscher said there were some things that needed to be worked out.

MOTION: A motion was made by **Senator Keough** to send H282 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator McGee**.

DISCUSSION: **Senator McGee** said he would vote for this bill because he thinks it is heading down the right road to solve the problem, but he would implore the counties and Representative Loertscher to use this protocol committee to discuss these issues.

SUBSTITUTE MOTION: A substitute motion was made by **Senator Kelly** to hold this bill in Committee and give the parties a chance to work it out and come back next year with something that everyone can agree on. The motion died for lack of a second.

ROLL CALL VOTE: Senators Compton, Brandt, Keough, and McGee voted aye. Senators Kelly, Broadsword, and Darrington voted nay. Senators Werk and Coiner were absent. The vote was 4 ayes and 3 nays.

ADJOURN: The meeting was adjourned at 4:46 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE:	Tuesday, March 22, 2005
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS PRESENT:	Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly
MEMBERS ABSENT/ EXCUSED:	
CONVENED:	Chairman Compton called the meeting to order at 3:19 p.m.
GUESTS:	See the attached sign-in sheet

Chairman Compton said that today they would discuss S1228, which was discussed the other day, and also S230 which the Committee had voted out to the Floor. At that time the trailer bill was presented and was the piece that DEQ said would help them find comfort in S230. It was his understanding that some of this language makes it compatible with EPA regulations. The Committee voted it to be sent to privileged committee to be printed and there was a healthy discussion about whether the Committee needed to have a unanimous decision or not. Later this was discussed with the Secretary of the Senate to review the rules. The Pro Tem, Majority Leader, and Chairman Compton met and were told that there was no Senate rule that required unanimous consent. However, in the secretary manual this past year, it stated that it should be a unanimous decision to send to privileged committee. Senator Darrington and his privileged committee agreed to print this bill with a letter from Chairman Compton and signed by the President Pro Tempore to do this.

S1228 Relating to Air Quality - **Dick Rush**, Idaho Association of Commerce & Industry.

This legislation adds to the definition of regulated air pollutant the authority for the Department fo Environmental Quality to Adopt and implement the permit to construct programs required by Sections 7412(g) and 7412(i) (1) of the Clean Air Act for major sources of hazardous air pollutants (HAPS).

Secondly, in subparagraph C, deleting the term “expressly” from both sentences, and adding the implementing regulations to the Clean Air Act reference, allows the Department of Environmental Quality to meet the minimum federal requirements in regard to the permit applicability treatment of fugitive emissions.

There is no fiscal impact due to the legislation.

MOTION: A motion was made by **Senator Broadsword** to send S1228 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator Brandt**.

DISCUSSION: **Senator Coiner** thought there had been some misrepresentations, claims, and/or misunderstandings. He expressed his concern about the representation, but if DEQ was comfortable with it, he would accept that.

Senator Darrington stated that on the first page of the amendment there was clarification in reference to the federal code as to what is regulated air pollutant. On the second page, clarification of regulations that are promulgated under the EPA will also be included as part of the requirements for a permit to construct, or operate.

ROLL CALL VOTE: Senators McGee, Keough, Brandt, Darrington, Broadsword, and Compton voted aye. Senators Kelly, Werk and Coiner vote nay. There were six ayes and three nays.

H324 Relating to the State Medical Assistance Program - **Representative Janice McGeachin**

Representative John Rusche presented the bill in the absence of Representative McGeachin. He explained that the purpose of this legislation is to specify services and treatments not covered under Idaho's state medical assistance program. The fiscal impact to the general fund is positive to the extent that certain services are not covered.

He stated that this bill came about after they rejected rules of the Department of Health & Welfare on experimental coverage. They felt there was a need for language to help direct the department in determining coverage that was acceptable and to help them to say no. Basically what this bill says is: <u>The cost of physician, hospital or other services deemed experimental are excluded from coverage.</u> That would allow the department to have the ability to say no when there were services that were not identified as being useful because of the lack of evidence. The second sentence says: <u>The director may allow coverage of procedures or services deemed investigational if the procedures or services are as cost effective as traditional, standard treatments</u>. That would allow the department to say yes if there was a basis of evidence that the investigational procedure would get good clinical results at a lower cost.

Senator Brandt asked what was defined as an experimental service in the medical world. **Representative John Rusche** said that it was usually determined by the rules or the language of the contract. In the case of a medicaid plan, it would be defined by the rules of the plan as allowed under the contract of the federal medicaid plan. The House Health and Welfare Committee rejected those rules at the start of the session.

Senator Werk asked how the department could make rules fast enough to keep up with changes in the experimental procedures. He would anticipate that there would be a gap between available experimental procedures and the department's ability to add those procedures to some

experimental procedures list. He asked how that would be dealt with. **Representative John Rusche** replied that he would expect it would be done by setting up a process of how experimental procedures are determined. Most health plans include scientific basis to investigate literature and refer the decision to a panel of experts. **Senator Werk** asked how cost effective would be defined in terms of continued care. One might decide that the procedure is not cost effective and then pay three times more in end-of-life care for a person that maybe could have been saved with something that might have cost more on the front end. **Representative John Rusche** said that when they had put the language in they were thinking the other way. The total expenses would be considered as to what the medicaid plan was liable for. For example, a disabled infant who could be treated with an investigational drug or even a transplant of some sort or they could face 10 or 12 years of chronic disability, institutionalization, and death. This would allow the department to make the determination on cost effectiveness and allow a type of treatment to be considered. **Senator Werk** then asked if the only possible treatment was experimental treatment that it would be excluded from coverage. **Representative John Rusche** said that would be the intent unless it was shown that it was as cost effective as other treatments.

Chairman Compton asked if Mr. David Rogers would care to comment on this issue.

David Rogers, Administrator for the Division of Medicaid, stated that there was an issue here that is being addressed by the Legislature on how medicaid approaches coverage for experimental and investigational procedures. There were some changes in the language to allow the department to take a broader view of cost effectiveness regarding the point that Senator Werk raised. They did not want to get caught in terms of a given procedure that might have been classified as investigational, not being cost effective versus a more traditional procedure and yet the ongoing care would be more costly overall. There were some changes so they were able to consider the entire episode of care and if a procedure that might be considered investigational more cost effective than the total episode of care with a procedure that was more traditional standard care. Finally, he believes Representative Rusche is on target in terms of how experimental and investigational procedures are defined.

Senator Compton asked Mr. Rogers how comfortable he was with this legislation. **Mr. Rogers** said that the legislation probably does no harm. He said “probably” because, as in contracts, if the language doesn’t do any good, you would probably be better off not having it. There is an issue that needs to be addressed. From his perspective the situation requires them to come back and do rulemaking.

Senator Brandt asked since the rules were rejected and they need to do something, is this what should be done. **Mr. Rogers** replied that he sees this as some general guidance from legislation, but rulemaking is still required to define the issues.

Senator Darrington asked if issues like this dealing with medicaid and dealing with insurance companies, is the tendency of legislatures to follow with medicaid policy what is already occurring out in the private sector with the insurance companies or is it the tendency of the insurance companies to follow what is done in policy in medicaid or is there any relationship. **Mr. Rogers** would think the norm would be that private insurers are not following medicaid in terms of their coverage decisions. Sometimes the department does look at the private sector in terms of how the coverage policy is drafted.

Senator Darrington stated that he was concerned about the language because from a political point of view, a constituent will call a senator and ask what they can do to get the director to decide in their favor. That would be a difficult position. **Mr. Rogers** said he thought that was part of the reality that they deal with.

Senator Werk asked what the sequence of events were that had them at this point. Did they accept or reject the rule. **Mr. Rogers** believed there was a concurrent resolution that came out of the Senate following the House action that concurred with the House.

Representative McGeachin closed the testimony by saying that the House Health and Welfare Committee did reject the set of rules that the department brought before them. She said there were two reasons that they rejected the rules.

1. There was a concern that these rules would have a financial impact that had not been considered.
2. It was a policy issue that should be subject to the full legislative debate and disclosure.

MOTION: A motion was made by **Senator Brandt** to send H324 to the Floor with a Do Pass recommendation. The motion was seconded by **Senator McGee** and the motion was **carried by a voice vote**.

GUBERNATORIAL APPOINTMENT Joan M. Cloonan, Boise, Idaho was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2004 and expiring July 1, 2008.

See Attachment #1 for Appointment letter from the Governor, Oath, Resume, and Senate Confirmation Form.

Dr. Cloonan said she had listed her political affiliation as an Independent, but the Governor had appointed her as a Republican and since Mrs. Calabretta is being appointed as a Democrat, they would be a balanced board.

Senator Werk said he did not have any paperwork that said she had been appointed as a Republican, only that she was an Independent. **Dr. Cloonan** replied that in her heart she was an Independent. It was her understanding that the Governor had appointed her as a Republican.

Senator Kelly said it was an important issue for them and the appointment letter does not document that she is being appointed as a Republican. **Senator Werk** asked that the Governor's office correct the paperwork so the nomination could move forward as the Governor intends. **Senator Darrington** said he didn't know why this was being pursued. He said if she was an Independent and not a Republican, why would the Democrats complain. She was very qualified for the Board appointment. **Senator Werk** said he understood what Senator Darrington was saying and that this had nothing to do with the qualification of Dr. Cloonan. He said the reason it was an issue for the minority party was that many boards require a political balance, but there are many Independents that come in that are Republican. **Senator Darrington** reminded Senator Werk that in this state there is no party registration. You are what you say you are. **Senator Kelly** just reiterated that this was an important issue for them.

MOTION: A motion was made by **Senator Brandt** that the gubernatorial appointment of Dr. Cloonan to the board of the Department of Environmental Quality be accepted. The motion was seconded by **Senator McGee** and the motion was **carried by a voice vote**. Senators Kelly and Werk voted no. Senator Brandt will sponsor the appointment on the Floor.

GUBERNATORIAL APPOINTMENT Martha A. Calabretta of Osburn, Idaho was appointed to the Board of Environmental Quality to serve a term commencing March 16, 2005 and expiring July 1, 2008.

See Attachment #2 for Appointment letter from the Governor, Oath, Resume, and Senate Confirmation Form.

She said her primary concern had been the issue of public input, including in DEQ where she arranged community groups to come before the board for public input time to educate the agency and board members about the community's restlessness and lack of satisfaction, both of DEQ's actions with the community and with all of the statements that were being made about the community and children. The other significant thing at DEQ were with settlements resolving environmental issues with all the major companies. She has served on the DEQ board before. She was involved in the Citizens Advisory Committee which was first independent and later part of the Coeur d'Alene Basin Commission. She was also hired by the trustees of the State Fund, which had been set up as a settlement camp by the mining companies. That was originally a settlement between the companies in the state of Idaho for all the liabilities dealing with Bunker Hill.

MOTION: A motion was made by **Senator Brandt** that the gubernatorial appointment of Mrs. Calabretta to the board of the Department of Environmental Quality be accepted. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**. Senator Werk will sponsor the appointment on the Floor.

PRESENTATION Mental Health Issues - Linda Hatzenbuehler, State Mental Health Planning Council from Pocatello, Idaho.

She presented a handout, Attachment #3 for the Committee to follow. She is a lifelong advocate for persons with mental illness. She has the privilege of serving on local, state, and national associations and organizations whose primary mission is to improve the services and knowledge about mental illness. She would prefer to think and talk about solutions, rather than problems. She lists the top fourteen problems of Idaho's Public Mental Health System with recommendations and solutions on the handout.

MINUTES: A motion was made by **Senator McGee** that the minutes of Tuesday, March 15, 2005 be approved as written. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**.

MINUTES: A motion was made by **Senator Broadsword** that the minutes of Thursday, March 10, 2005 be approved as written. The motion was seconded by **Senator Werk** and the motion was **carried by a voice vote**.

ADJOURN: The meeting was adjourned at 4:31 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary
Leigh Hinds