

Senate Health & Welfare Committee

Minutes
2007



MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 11, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Hammond, Kelly

MEMBERS ABSENT/ EXCUSED: Senators Coiner, Bair, Werk

CONVENED: Chairman Lodge called the meeting to order at 3:03 p.m.

GUESTS: See an attached sign-in sheet.

WELCOME Chairman Lodge welcomed everyone in attendance, offered introductions of staff, and presented a brief statement of purpose/committee goals for the coming year.

RULES

16-0202-0701 Relating to the rules of the EMS Physician Commission.

Dia Gainor, Bureau Chief of Emergency Medical Services with the Department of Health, explained that she is requesting an extension to the temporary rules that will become effective as of February 1, 2007. The temporary rules recently published on January 3 and the public comment period does not conclude until April 27, 2007. The rules were prepared by the EMS Physician Commission for the 2006 legislative session and were created for two important purposes after the rules of the Board of Medicine related to emergency medical services were repealed. It is felt that these rules are necessary to put the same foundation back in to place as the Board of Medicine originally set the standard scope of practice, skills, devices, and medications that EMS personnel may use, and, to establish the required level of physician supervision. Ms. Gainor reinforced that while there is very limited feedback to date (as the public comment period has not yet come to a close) the EMS personnel are very alert and vocal regarding laws and rules within their domain, i.e., during the next legislative session she feels there will be plenty to discuss.

Senator Kelly asked if EMS personnel had been acting under any/no rules since the last legislative session. **Ms. Gainor** confirmed that the rules associated with the Board of Medicine were repealed this past summer and the same subject matter is being presented today which is part of the reason why they are "temporary," i.e., this is a life safety issue.

Senator McGee inquired as to the next steps with respect to a motion. **Ms. Gainor** deferred to **Frank Powell**, Rules Specialist with the

Department of Health, instrumental in helping to craft the rules at hand. **Mr. Powell** recommended a motion for the extension of the temporary rules (through the 2007 legislative session).

MOTION

Senator McGee moved to extend 16-0202-0701 until the 2008 legislative session. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

16-0208-0601

Relating to vital statistics rules on authority to determine final disposition of dead body.

James Aydelotte, Bureau Chief of the Bureau of Health Policy and Vital Statistics, Department of Health, reminded the committee that last year the Idaho Funeral Services Association introduced HB646 in order to clarify Idaho's disinterment law, i.e., who can legally request the removal of a body from where it is buried. The amended law makes it clear that the person who has the authority to determine final arrangements is the same person who may authorize the removal of the body from where it is buried. Mr. Aydelotte stated that this is a very straightforward change to allow the rules to agree with the amended statute and provide for minor updates. **Senator Darrington** stated that it seems to be absolutely consistent with the legislation of last year and asked Mr. Aydelotte to confirm. **Mr. Aydelotte** confirmed yes.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to approve 16-0208-0601. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0215-0601

Relating to immunization requirements for school children.

Dieuwke Spencer, Bureau Chief of Clinical and Preventative Health Services, Department of Health, stated that the pending rule change would allow a physician to choose the most medically appropriate interval for a child's immunization schedule within the recommended age range of 4 to 6 years old. Last spring the Division of Health met with the Idaho Medical Association's Public Health Committee. The committee requested that the School Immunization Rules be reviewed as they were not aligned with the recommendations of the federal Advisory Committee on Immunization Practices. Ms. Spencer also stated that the docket contains minor rule changes to update currently available vaccines while sections addressing Intent to Immunize and Declination of Immunization have not changed. Additionally, the proposed changes would allow doctors to choose the most medically appropriate time for a child's immunizations versus requiring them to immunize at the youngest recommended age. **Senator Darrington** remarked that when Dr. Riggs wrote the immunization law a few years ago he thought there was a provision to opt-out for those who are philosophically opposed to immunization and wanted to know if there was a section in the rules that replicates that language. **Ms. Spencer** stated that there were no changes. **Senator Darrington** asked if a 90% immunization rate was considered "total immunization." **Ms. Spencer** confirmed yes. **Senator**

Kelly requested the number of those who opt out. **Ms. Spencer** deferred to Traci Berreth, Immunization Program Coordinator, Department of Health. **Ms. Berreth** stated that she feels it is less than 10%.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator McGee moved to accept 16-0215-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0414-0601

Relating to low income energy assistance.

Genie Sue Weppner, Program Manager, Department of Welfare, stated that the Low Income Energy Assistance Program (LIHEAP) provides assistance via federal subsidies to low income households with their energy needs. It is felt that proposed changes will help remove barriers and target energy assistance to those families who need it most. Currently, recipients are required to attend conservation classes and also receive a home energy audit that teach how to manage energy consumption. Because the definition of the "targeted population" is broad, the twenty-five dollar additional benefit goes to every applicant. By targeting the benefit to households with children under six, disabled family members, or those over the age of 60, the most vulnerable population will receive assistance. Ms. Weppner suggests removing the LIHEAP matrix from the rules since they change each year, determined/calculated by fuel costs, federal funding, and federal poverty levels. By removing it from the rules and placing it in the LIHEAP manual, the need to come before the legislature each year would be alleviated. **Senator Kelly** would like to know how to incorporate by reference only. **Ms. Weppner** stated that they have sought DHE advice on this matter and were told they could do that, however, if more information is needed, they will reconsider/compile. **Senator Kelly** asked for clarification on how removing from the rules would maintain the force of law because it would not be reviewed each year. **Ms. Weppner** stated that their only intention is to remove the matrix from the rules and place it into their manual since the matrix is the only component in the manual that was in the rule. Because the determining factors alter the matrix so, too, does the amount of money from the federal government which affects the benefit amount. **Senator Hammond** asked for confirmation that the matrix section is the only one being removed in response to inflation and related factors. Ms. Weppner confirmed yes. **Senator Darrington** is concerned that energy providers should receive the payment instead of the individual. **Ms. Weppner** confirmed that the payments are cut directly to the providers. **Senator Kelly** would like to know if this is a one-time payment and if it only applies to heating versus cooling. **Ms. Weppner** stated that it is a one-time payment and defers to Beverley Berends, Grant Contracts Officer, Department of Welfare. **Beverley Berends** stated that there is a crisis program in place regardless of the time of year when found it is necessary for health and safety. **Senator Kelly** would like to know what percent of the program is federally funded. **Ms. Weppner** stated that they do not have enough money all of the time and they first identify what funds they have and divide it by the need/eligibility. In the past businesses such as

Idaho Power have collected and distributed assistance funds for those who need it aside from the LIHEAP program. Senator Kelly asked the percent of federal funds used. **Ms. Weppner** confirmed that no state funds are used with the exception of last year when one-time state funds were requested to meet the demand.

MOTION

Senator Darrington moved to adopt 16-0414-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0604-0601

Relating to statewide and regional substance abuse coordination committees.

Terry Pappin, Substance Abuse Program Specialist, Division of Behavioral Health, Department of Health and Welfare, stated that during the previous legislative session, Idaho's health and safety code was changed and those changes were so clear that the chapter 16-0604 of Health and Welfare rules are no longer necessary to guide the department in creating and maintaining statewide and regional coordinating committees. The repeal of this entire chapter is recommended.

MOTION

Senator Hammond moved for approval of the repeal of the chapter under docket 16-0604-0601. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0322-0601

Relating to Residential Care and Assisted Living (RALF) rules, specifically as they pertain to sprinkler systems.

Randy May, Medicaid Division, Department of Health and Welfare, stated that this docket deals with the rules governing residential care in an assisted living facility within Idaho. Mr. May also offered the definition for assisted living and emphasized the safety of residents. There are 284 assisted living facilities across the state serving over 7,000 Idaho residents. They range in size from small 3-bed facilities up to/including larger 130-bed facilities and are licensed by the Department of Health and Welfare Facility Standards Bureau. During the 2004 session HCR49 was passed and the Department of Health and Welfare was asked to work with interested stakeholders to reshape and reform the regulatory oversight and guidance of assisted living. During the 2005 legislative session a new statute had been written and was presented. During the 2006 session, again with the department working alongside interested stakeholders, administrative rules governing assisted living were revised to bring them into alignment with the newer statute. A controversial issue that arose was the requirement of a fire suppression system, impacting 28 facilities within the state. A grandfather clause was drafted last session in compromise for those facilities, also establishing a new sunset date of July 1, 2010, serving as the date certain that all of these facilities must either have a suppression system installed or cease the practice of admitting and retaining residents. **Vice Chairman Broadword** inquired as to the status of a loan program/monies discussed last session intended to assist the facilities in an upgrade. **Mr. May** stated the possibility of revolving and/or matching funds were explored, however, the amount of interest involved was not feasible. Three other sources were identified

(Secretary of State's Office, micro-loan project through the Small Business Administration and regional development agencies, and a local commercial bank) and Mr. May stated he personally wrote to all 28 locations and outlined the possibilities. **Larry Benton**, Idaho Assisted Living Association, also stood in support of the rule adoption.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator McGee moved to accept 16-0322-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:49 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 15, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:03 p.m.

GUESTS: See an attached sign-in sheet.

PRESENTATION Senator Joe Stegner
Report of Interim Committee for Mental Health and Substance Abuse

Senator Stegner explained that the committee was charged with undertaking a complete study of the current mental health and substance abuse delivery system in the state. They met four times, and entertained 35 industry presenters with diverse interests from all over Idaho. Some of what was learned: most individuals have to break the law to access treatment; the waiting list for state hospitals is lengthy and services are limited to court-ordered involuntary commitments; the capacity for voluntary commitment is a thing of the past; the limited service at the state hospital level, especially geographically, is under serving those in need; a high percentage of those with mental illness have cooccurring substance abuse problems; critical shortages and gaps in treatment and support services statewide exist. In short, the cost to society is staggering. Senator Stegner went on to speak in detail about the eight recommendations formulated by the committee. **Senator Darrington** asked if the committee had worked with the Idaho Council on Children's Mental Health (ICCMH), if they were concerned about dual delivery, and if children's issues were examined. **Senator Stegner** stated that the adult side was the focus. **Vice Chairman Broadsword** thanked Senator Stegner for an amazing job well done and commented on the concept of juvenile mental health courts. **Senator Stegner** stated he would encourage areas that could support juvenile mental health courts but there is a possibility that it may not work well in rural areas. **Senator Kelly** referenced recommendation #8 and asked if there was any way to prioritize the list or if there was particular conflict with the "Drug Czar" idea, i.e., serving as the independent evaluator of the committee proposals. **Senator Stegner** explained that the committee feels an independent review is necessary because legislators are not generally skilled in clinical and scientific options. **Senator Coiner** thanked Senator

Stegner for his leadership and assistance with understanding mental health issues. **Chairman Lodge** thanked Senator Stegner for presenting on this very important issue.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

PRESENTATION

Dick Armstrong, Director of Health and Welfare
Introduction of Department Supervisors

Dick Armstrong introduced himself and stated he had been appointed by Governor Risch in June of 2006 after retiring with Blue Cross of Idaho after 36 years. Mr. Armstrong offered his background in customer service, system conversion/transitions, innovation and Medicaid reform, all of which he feels equate to progress. One of the first orders of business, once appointed, involved the reorganization of the department as promulgated by Executive Order, also creating the Division of Behavioral Health, all of which took place in very short order and without interruption of service. Mr. Armstrong recognized each senior leader in attendance and offered a brief description of their role. **Vice Chairman Broadsword** thanked the guests. **Senator Werk** requested a contact/phone list. **Mr. Armstrong** confirmed there was a list en route. **Senator Kelly** requested an update as to the interaction between the Board of Health and Welfare and the reorganization. **Mr. Armstrong** reported that the business structure and creation of subcommittees in order to review major operating areas, have given a sort of secondary responsibility to board members and engages them significantly. **Senator Darrington** commented that he feels the hardest job in state government belongs to the workers in the field, in particular that they have been most frustrated with past administrations when they are not heard, i.e., they know what works and what doesn't work and want to be listened to. Senator Darrington stated that under the current leadership team those in the field are cared for and have the opportunity to contribute. **Mr. Armstrong** emphasized that they try to stay at the "grass roots" level and supply the tools necessary for the department to serve Idahoans. **Chairman Lodge** thanked Mr. Armstrong for bringing his fine team to the committee and for their service to Idaho.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

RULES

16-0601-0601

Relating to Family and Children's Services

Shirley Alexander, Program Manager in the Central Office, Department of Health and Welfare, Division of Family and Community Services, stated that the proposed change of rules will clarify the improved safety, permanence, and well being for children in the foster system and in state guardianship. Changes include identifying specifically who is required to undergo a background check while fostering; slight definition modification according to input from courts, families, and technical assistance from the National Resource Center on Child Maltreatment; and not requiring staff

to make out-of-state visits for children in state custody who are placed outside of Idaho (the child is monitored through the other state agency). **Senator Werk** asked about substantial vs. out of state distances, i.e., locations in bordering states could actually be in closer mileage proximity than perhaps an area in the furthest corner of Idaho. **Senator Werk** also inquired if Idaho can, in rule, dictate what another state does for the care of a child. **Ms. Alexander** explained that in the rules the Interstate Compact Act is referenced, a federal agreement. Additionally, the rules include agreements of reciprocity. **Senator Werk** asked how substantial distance is defined and how we are responding to that in our state. **Ms. Alexander** explained that a social worker in another state responds to that child. **Vice Chairman Broadsword** asked if there were any instances in the state of Idaho where the child is a "substantial distance" from where the social worker would be. **Ms. Alexander** stated that they would always have someone supervising that and seeing that child on a monthly basis. **Chairman Lodge** asked how many children are placed outside of Idaho and for what reason. **Ms. Alexander** explained that there are 200 children in Interstate Compact that are placed out of state, typically a relative placement. **Ms. Alexander** went on to finish listing the changes in the docket. They include allowing a child to move with their foster family out of the state and the family is able to maintain their Idaho foster license until licensing is complete in another state (typically pre-adoptive families or relatives). **Senator Darrington** asked if there are standards in foster care from state to state. **Ms. Alexander** confirmed that there are standards and through the Interstate Compact are required to obey the rules of the state in which the child was sent. **Ms. Alexander** again went on to finish listing the changes in the docket. They include allowing a reduction in time of supervision for a child being adopted by their foster parents; ensuring financial support to a family with hard-to-place children who are acting as guardians while the child is awaiting adoption; and waiving adoption-related fees for parents with a foster child in their home who are waiting to adopt the child. **Vice Chairman Broadsword** asked if the state continues to pay for the care of that child if the child is adopted (since we are pushing for adoption rather than foster care). **Ms. Alexander** explained that if the child cannot be placed without adoption assistance, the payment would not exceed the foster care payment in order for that family to meet the special needs of that child. **Vice Chairman Broadsword** asked if that only includes special needs children. **Ms. Alexander** stated that most of the children in Idaho's foster care system meet the definition of special needs because of abuse or neglect and also need to be kept together as a sibling group. In addition, while most parents qualify, not all foster parents who are adopting will request a monetary payment but oftentimes want to negotiate having that available in the future. **Ms. Alexander** again went on to finish listing the changes in the docket. They include broadening the purpose of state-funded adoption assistance to include hard-to-place children from foster care or institutional homes. **Vice Chairman Broadsword** cited the Immediate Safety Assessment and asked for clarification. **Ms. Alexander** explained that when the department responds to a referral of abuse/neglect, they use this form containing 17 chapters that were developed by the American Humane Association. **Senator McGee** asked

if there was anything in this rule that would lead someone to believe that kids in Idaho would be less safe. **Ms. Alexander** responded no.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to adopt the rule changes for 16-0601-0601. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

16-0602-0601

Relating to Child Care Licensing

Shirley Alexander, Program Manager in the Central Office, Department of Health and Welfare, Division of Family and Community Services, stated that the proposed change of rules will protect children in foster care and licensed facilities from accidental drowning. The rule changes in the docket also clarify requirements for fingerprinting children in a licensed foster home or facility that are turning 18. **Senator Werk** inquired as to the definition of licensed child care facility. **Ms. Alexander** explained that day schools and similar are not the type of licensed child care being referred to. **Ms. Alexander** reminded the committee that the rule changes in the docket clarify requirements for fingerprinting children in a licensed foster home or facility that are turning 18. Currently foster children turning 18 are required to be fingerprinted and undergo a background check upon their 18th birthday. It is felt that is no longer necessary due to constant contact and history with the child but a safety check is being suggested for a young adult who would move out of the home for at least 90 days and then returns. The proposed change of rules will protect children in foster care and licensed facilities from accidental drowning in swimming pools and/or related water hazards near the property of a foster parent, as the number one reason for death in Idaho of children in foster care is drowning. The rule changes in the docket would also allow any alcohol and drug counselor, hired after June 30, 2001, to have up to three years with no grace period in order to meet requirements. **Chairman Lodge** referred to a drowning incident that took place in her district and thanked Ms. Alexander for their modifications to the rules. **Senator McGee** asked if these rules would be discussed with foster parents before a placement is made. **Ms. Alexander** stated yes and that in the wake of the deaths this summer, all foster parents were visited in the state of Idaho regarding these safety precautions. **Senator Werk** requested how many children have drowned in foster care vs. those not in foster care, i.e., is there a particular problem with the foster care system? **Ms. Alexander** stated that there were 11 drownings this past summer and three of those were children in foster care. **Senator Kelly** stated that these precautions seem like common sense and wanted to know what the penalty is for not complying with the guidelines. **Ms. Alexander** stated that the department cannot take a chance with a child's life and the safety plans were reviewed with all of the foster families; if someone would not meet the requirements there would be no placement in the home. **Senator Kelly** explained that she appreciates that all of the homes were visited; shared her concerns about a department's short staffing; and asked how often the homes are being inspected and if there were significant

consequences for not adhering to the rules. **Ms. Alexander** explained that homes are visited by a social worker monthly and they are instructed to be looking for haphazard evidence.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator McGee moved to accept docket 16-0602-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0411-0601

Relating to Developmental Disability Agencies

Cameron Gilliland, Developmental Disabilities Program Manager, Division of Family and Community Services, Department of Welfare, asked the committee to consider changes to the rules in order to add supportive counseling as a service for individuals with developmental disabilities. During the last legislative session a broad update of the Developmental Disability Agency rules was adopted, including the requirements for psychotherapy becoming aligned with the requirements listed in the rule governing social work. Under the update bachelor's level social workers would no longer be able to provide psychotherapy to individuals with developmental disabilities. The Idaho Developmental Disability Agency Association pointed out that social workers provide valuable counseling to individuals who have developmental disabilities. Supportive counseling was then requested as a new service by the Idaho Developmental Disability Agency Association. Supportive counseling is within the scope of practice of social workers as defined by the rules governing social work.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved for adoption of docket 16-0411-0601. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0606-0601

Relating to Developmental Disability Family Support and In-Home Assistance

Cameron Gilliland, Developmental Disabilities Program Manager, Division of Family and Community Services, Department of Welfare, asked the committee to adopt as final the Family Support and In-Home Assistance Rules. Since 1997 the program has helped sustain families who have a family member with a developmental disability living in the family home and by helping unpaid caregiving families to pay for respite care, specialized evaluations, adaptive equipment, specialized clothing, and other supports when no other resource is available. The program assists many families that might not be able to care for a family member in the family home without this support. Initially the program was created by a group of stakeholders and family members of individuals with disabilities. These stakeholders and families were instrumental in passing Idaho Code 39-5100 which governs the program and they also developed

a set of written standards to guide implementation and management of the program. These standards were not made into rules so the purpose of this docket is to bring those standards into rule, making them clear, enforceable and available to families.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Bair moved to adopt docket 16-0606-0601. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0308-0602

Relating to Temporary Assistance for Families in Idaho (TAFI)

Genie Sue Weppner, Program Manager, Department of Welfare, stated that since welfare reform began, Idaho's TAFI program has been a top performer in the nation. Idaho achieved a significant reduction in its caseload and met the performance standards as set forth by the federal government, earning bonuses for several years. There are new regulations for 2007 as a result of the optimization of the Temporary Assistance for Needy Families (TANF) grant, the name of the federal program. In order to improve Idaho's participation rates, avoid penalties, and continue excellent performance, it is asked that the department not be required to provide the 10-day notice before closure of a TAFI case. All individuals receiving TAFI sign a Personal Responsibility Contract (PRC), agreeing to participate in an activity that leads them to self-sufficiency, many of which are work programs. As it is, those that fail to meet the guidelines are sent a notice of case closure/sanction, however, these individuals have already failed to participate; ten additional days of notice are unnecessary as program participants have already agreed to the requirements at the time they sign the PRC. **Senator Bair** asked how participants will know that their case is going to be closed when they fail to perform. **Ms. Weppner** explained that during the signing of the PRC the requirements are discussed with participants in detail. The case can be reconsidered/reopened if the participant is able to show cause. **Senator Darrington** asked if the error rate is a determination of federal sanction. **Ms. Weppner** explained that currently the error rate is not a determination of sanction but failure to meet the participation rate standard is. **Senator Darrington** asked if we are in a good range at this time. **Ms. Weppner** stated that there is no error rate in the Idaho TAFI program. **Vice Chairman Broadsword** thanked Ms. Weppner for including her in the TAFI regional discussion in Seattle this past summer.

MOTION

Senator McGee moved to adopt docket 16-0308-0602. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0305-0607

Relating to Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, stated that the changes in this docket remove the Traumatic Brain Injury (TBI) Waiver eligibility criteria and clarifies the Aged and Disabled (A&D) Waiver criteria so that the two waivers can be combined aligning with the Division of Medicaid rules,

which allows for better access to wavered services for clients. **Senator Werk** asked if there was any action on the evaluation/comments supplied from Paige Parker, Legislative Services Office, regarding these rules (that Senator Werk reviewed during the summer of 2006). **Ms. Cummins** stated that she is not familiar with Mr. Parker's feedback. **Senator Werk** asked that a copy of Mr. Parker's evaluation be provided and also asked if there was going to be a loss of coverage to anyone due to the proposed removal of the TBI Waiver. **Ms. Cummins** confirmed that there is no loss of coverage for that group. **Senator Werk** asked if, by transferring the TBI elements elsewhere, did the reimbursement for the services change. **Ms. Cummins** states she is not aware of that answer and deferred to Bill Walker, Deputy Director, Department of Health and Welfare. **Mr. Walker** explained that the change in this docket, or within the related Medicaid docket, does not change reimbursement procedures for services.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved for adoption of docket 16-0305-0607. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:40 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 16, 2007
TIME: 3:00 p.m.
PLACE: Room 437
MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Werk, Kelly
MEMBERS ABSENT/ EXCUSED: Senator Bair
CONVENED: Chairman Lodge called the meeting to order at 3:05 p.m.
GUESTS: See an attached sign-in sheet.

RULES

16-0305-0601 Relating to Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled

Peggy Cook, Medicaid Eligibility Program Manager, Division of Welfare, explained that the rule increases the amount of money available to meet personal expenses for disabled Medicaid recipients who live in room and board, residential, and assisted living facilities or certified family homes. The needs allowance increased from \$67 to \$77 per month and is the result of a compromise reached with stakeholders, approved during the 2006 legislative session.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION **Senator Darrington** moved to accept the rule changes for 16-0305-0601. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0305-0604 Relating to Eligibility for Aid to the Aged, Blind, and Disabled

Peggy Cook, Medicaid Eligibility Program Manager, Division of Welfare, explained that the rule increases the amount of money available to meet personal expenses for disabled Medicaid recipients who live in room and board, residential, and assisted living facilities or certified family homes. The personal needs allowance will increase based on the Social Security cost of living increase. 20% of the increase will go to the participant and 80% will be available to pay for rent, utilities, and food. This year the total cost of the increase is \$20. **Vice Chairman Broadsword** asked if there were any public comments or advocacy groups that were upset with the rule. **Ms. Cook** explained that the input received helped achieve a

consensus before the rule making was complete. **Senator Darrington** asked for clarification of the acronym, "TEPI." **Ms. Cook** stated it was short for Trust and Estate Planning Professionals of Idaho.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Coiner moved to approve the rule changes for 16-0305-0604. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0506-0602

Relating to Criminal History and Background, Rewrite

Mond Warren, Bureau Chief, Bureau of Audits and Investigations, Department of Health and Welfare, explained that the Criminal History Unit within the Bureau processes background checks for individuals who have access to vulnerable adults/children, such as foster care and adoption applicants, Medicaid providers, licensed day care providers, etc. Several groups of providers and stakeholders have helped review and refine the process for conducting background checks, representing sound changes that incorporate technology and efficiency.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Darrington moved to approve the rule changes for 16-0506-0602. The motion was seconded by **Chairman Lodge**. Further discussion was extended to **Senator Werk**, who asked if all individuals listed (in need of a background check) that were combined into one list under these rules, were referenced in other rules and how. **Mr. Warren** explained that the list in the rules at hand is one that the FBI reviews and the department would oversee updating in other rules. The motion carried by **voice vote**.

16-0506-0601

Relating to Criminal History and Background, Repeal

Mond Warren, Bureau Chief, Bureau of Audits and Investigations, Department of Health and Welfare, reminded the committee that this is a repeal only.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Werk moved to accept 16-0506-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0507-0601

Relating to Investigation and Enforcement of Fraud, Abuse and Misconduct

Mond Warren, Bureau Chief, Bureau of Audits and Investigations, Medicaid Fraud Integrity Unit, Department of Health and Welfare, stated the Office of Performance Evaluations conducted a review of the Medicaid fraud investigative activities within the department a few years ago and compared their findings to those in other states. The

reviewers did recommend that the fraud unit should stay within the department but they be segregated from Medicaid operations for a higher level of independence. As a result, the fraud investigative functions now reside outside of the Medicaid division and report to the executive management of the department. In the last year Medicaid has revamped the medical system rules, repealing previous rules and rewriting them due to Medicaid reform initiatives. This also moves the Medicaid provider abuse rules into a separate chapter. This is simply a retitle of the rules.

Vice Chairman Broadsword asked that the vote relating to 16-0507-0601 be held until the next meeting in order to meet quorum requirements.

16-0316-0601

Relating to Premium Assistance

Patti Campbell, Project Manager, Division of Medicaid, Department of Health and Welfare, stated that the primary policy change in this docket is better alignment of employer contributions with insurance carrier requirements. Previously, employers were required to pay 50% of the employee's premium and 50% of a participating spouse's premium, which was found to be more restrictive than the requirements of the insurance carrier. Last session state law was modified to remove the employer contribution and align it with the insurance carrier requirements. Federal approval was also received from the Centers for Medicaid and Medicare Services regarding this change. Additionally, public meetings were held and comments were incorporated into the language. **Senator Werk** asked to be reminded of the number of adults that the program is limited to. **Ms. Campbell** responded that state law provides for 1,000 adults and there are no limits for children. **Senator Werk** asked if the barrier was substantial as the low number of adults participating is noticeable. **Ms. Campbell** explained that several surveys from employers and insurance brokers indicated the 50% requirement contribution as the barrier (which is what is being removed from this rule).

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0316-0601 be held until the next meeting in order to meet quorum requirements.

16-0305-0606

Relating to the Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled

Peggy Cook, Medicaid Eligibility Program Manager, Division of Welfare, explained that this rule is the result of the 2006 House Concurrent Resolution 53. This rule requires an individual who is eligible for Medicare to enroll in Medicare as a condition of eligibility for Medicaid, i.e., Medicare will be billed before Medicaid and does not reduce services available to persons who receive both Medicaid and Medicare. The docket also brings the rules into alignment with the Medicaid state plan. **Senator Darrington** asked how the total cost of Medicaid will be reduced without diminishing the distribution of services. **Ms. Cook** described

Medicare as being the “first to pay” option.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0305-0606 be held until the next meeting in order to meet quorum requirements.

16-0317-0601

Relating to Service Coordination, Repeal

Paul Leary, Deputy Administrator, Medicaid, Department of Health and Welfare, explained that the entire chapter of rules, IDAPA 16.03.17 - Service Coordination, is being repealed July 1, 2006, as part of the process for implementing House Bill 776. The rules governing service coordination, also known as Targeted Case Management have been incorporated into IDAPA 16.03.10 – now called “Medicaid Enhanced Plan Benefits,” and can be found in Docket 16-0310-0602 also effective July 1, 2006. IDAPA 16.03.17 will contain the rules for the Medicare-Medicaid Coordinated plan that will be implemented later in 2007.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0317-0601 be held until the next meeting in order to meet quorum requirements.

16-310-0603

Relating to Enhanced Plan Benefits - Traumatic Brain Injury (TBI) Benefits

Paul Leary, Deputy Administrator, Medicaid, Department of Health and Welfare, explained that Chapter 10 of the medical assistance rules have been amended to allow for Traumatic Brain Injury services to be provided under the Aged and Disabled (A&D) Waiver. The Traumatic Brain Injury Waiver was incorporated into the Aged and Disabled Waiver effective October 1, 2006. Both Waivers had similar eligibility criteria for level of care determination and the only change to the A&D Waiver was the inclusion of specific TBI services (habilitation, supported employment, behavior consultation and crisis management). Although there was no formal negotiated rule making, informal meetings were held with various provider groups and advocates. A hearing was held on November 8, 2006, and only department staff attended. **Senator Darrington** asked if the committee had heard this rule or one similar during the previous meeting. **Mr. Leary** stated no. **Senator Werk** asked if there was an overall lack of services regarding the topic of Traumatic Brain Injury and what range of services were available, and, if the department had consulted area hospitals/premier local programs. **Mr. Leary** explained they were not involved directly with area hospitals but the meetings were open, and also reminded the committee that the waiver had been in existence for over three years. Mr. Leary also explained that there have been very few participants and by moving it into the A&D Waiver there might be an increase in the participation level. Regarding whether or not the quality of service meets the need, there have been no requests to

enhance the service.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-310-0603 be held until the next meeting in order to meet quorum requirements.

16-0305-0701

Relating to Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, explained that the addition of the rules encourages Idahoans to purchase long term care insurance which postpones the need to apply for Medicaid to help with long term care costs. The rule making is the result of an option allowed under the Deficit Reduction Act of 2005 passed into Federal law on February 8 of 2006, and to align with Idaho Statutes. **Vice Chairman Broadsword** inquired as to the details of the cost sharing waiver legislation that was passed in 2006 and the relationship to these rules. **Ms. Cummins** stated the rules are late due to working with the Department of Insurance (DOI), defining qualified long term care insurance policies as the DOI will be certifying them. **Robert Vande Merwe**, Executive Director, Idaho Healthcare Association, explained that he objects to this rule and the next two corresponding rules and asked the committee to please hold the rules, at least until another meeting can take place between the estate planner community and the Department of Health and Welfare. **Senator Darrington** commented that he feels these rules are straightforward and that buying long term care insurance is not a recoverable asset at the time of death, and asked if Mr. Vande Merwe objected to the principle of not being able to recover the cost of the long term care premium. **Mr. Vande Merwe** stated that he is not certain where the heartburn lies with the estate planners but is asking for time in order for them to explore the details. **Senator Werk** inquired as to who Mr. Vande Merwe is representing. **Mr. Vande Merwe** explained that he is not certain but assumes one of the groups could be Trust and Estate Planning Professionals of Idaho (TEPI). **Vice Chairman Broadsword** deferred the conversation to **Willard Abbott**, Deputy Attorney General assigned to the Medicaid Division of the Department of Health and Welfare. **Mr. Abbott** commented that he is not aware of any objections from TEPI and went on to detail the Deficit Reduction Act and how it might relate to Medicaid eligibility. **Senator Darrington** stated that he is not certain why there might be controversy on this docket. **Ms. Cummins** clarified to Senator Darrington that the advantage is that the long term care insurance will pay for someone actually in long term care and the amount that the insurance pays is what the department can disregard as assets when someone applies for Medicaid. **Senator Darrington** restated that he feels long term care insurance is encouraged overall. **Ms. Cummins** agreed.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0305-0701 be held until the next meeting in order to meet quorum requirements.

16-0305-0602

Relating to Eligibility for Aid to the Aged, Blind, and Disabled

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, explained that the changes in this docket and the next docket help protect Medicaid for those that need it by discouraging the sheltering of assets. The changes include requiring citizenship documentation, extending the amount of time that the asset transfers be reviewed, and separating annuities and life estates into their own sections of rules. **Vice Chairman Broadsword** asked if the five-year time period was a part of the federal regulations. **Ms. Cummins** confirmed yes. **Vice Chairman Broadsword** asked, for example, if Grandma has a pair of diamond earrings received from Grandpa on their 25th wedding anniversary, and they are given to the granddaughter on her 16th birthday, a year before Grandma goes into the nursing home, does the granddaughter have to sell the earrings? **Ms. Cummins** explained that the earrings were not held for their personal value - they were held as personal property and they would not be a countable resource. **Robert Vande Merwe**, Executive Director, Idaho Healthcare Association, stated he feels this docket, especially, harms a facility.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0305-0602 be held until the next meeting in order to meet quorum requirements.

16-0305-0605

Relating to Eligibility for Aid to the Aged, Blind, and Disabled

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, reminded the committee that the rules in this docket are necessary because they provide clarifications based on federal laws that are used in determining eligibility for Idaho Medicaid assistance. **Vice Chairman Broadsword** asked, for example, if a couple makes the decision to place all of their property in trust, and 20 years later they go into the nursing home, is the property receivable by Medicaid? **Ms. Cummins** deferred to **Willard Abbott**, Deputy Attorney General assigned to the Medicaid Division of the Department of Health and Welfare. **Mr. Abbott** stated that if it were a 20-year period the assets would not be recoverable, i.e., the look back period is 5 years prior to entering the nursing home or 5 years from the transfer of the asset, whichever is greater. **Senator Darrington** recommended that the full committee, upon return, consider approving all dockets heard for the day with the exception of 16-0305-0701, 16-0305-0602, and 16-0305-0605, in hopes that Robert Vande Merwe will return during the next meeting with specific objections.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0305-0605 be held until the next meeting in order to meet quorum requirements.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:15 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 17, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:04 p.m.

GUESTS: See an attached sign-in sheet.

RULES

16-0305-0606 Relating to Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

MOTION **Senator Darrington** moved to accept the rule changes for 16-0305-0606. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0507-0601 Relating to Investigation and Enforcement of Fraud, Abuse, and Misconduct

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION **Senator Darrington** moved to accept the rule changes for 16-0507-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0316-0601 Relating to Premium Assistance

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Darrington moved to accept the rule changes for 16-0316-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0317-0601

Relating to Service Coordination, Repeal

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Darrington moved to accept the rule changes for 16-0317-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0310-0603

Relating to Enhanced Plan Benefits - Traumatic Brain Injury Benefits

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Darrington moved to accept the rule changes for 16-0310-0603. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0305-0701

Relating to Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, explained that the addition of the proposed rules encourages Idahoans to purchase long term care insurance, which postpones the need to apply for Medicaid to help with long term care costs. **Bob Aldridge**, Chairman, Trust and Estate Professionals of Idaho, asked that 16-0305-0701, 16-0305-0602, and 16-0305-0605 be suspended until there has been enough time to sit down with the Department of Health and Welfare, due to changes that he feels would affect the ability of people to carry long term care insurance, especially where annuities are concerned. **Senator Darrington** asked Mr. Aldridge if he was opposed to the three paragraphs of inclusive language or if he was opposed because of language not included in the rule. **Mr. Aldridge** stated that he feels there are other items that have to be in place and does not believe this rule is able to stand alone without

reviewing the finer details of this and associated dockets. **Vice Chairman Broadsword** requested that the Department of Health and Welfare come together with the Trust and Estate Professionals of Idaho within the next week and come to an agreement regarding the rules. **Senator Werk** asked Mr. Aldridge about relationships, specifically if he was representing people who sought estate planning as a method to maximize their assets. **Mr. Aldridge** clarified that a substantial amount of his individual practice is Medicaid work, 60% of which are people with extremely limited assets and the practice is trying to achieve mere survival for them. In essence, he is representing low income, limited asset individuals, who need to be protected and the majority of his time is donated.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0305-0701 be held for one week from January 22, 2007, in order for interested parties to discuss the rule development.

16-0305-0602

Relating to Eligibility for Aid to the Aged, Blind, and Disabled

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0305-0602 be held for one week from January 22, 2007, in order for interested parties to discuss the rule development.

16-0305-0605

Relating to Eligibility for Aid to the Aged, Blind, and Disabled

This rule was heard on Tuesday, January 16, 2007, during the Senate Health and Welfare Committee meeting and was expected to be voted on this day.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Vice Chairman Broadsword asked that the vote relating to 16-0305-0605 be held for one week from January 22, 2007, in order for interested parties to discuss the rule development.

PRESENTATION

Norm Semanko, Idaho Council on Industry and the Environment
An Overview on Administrative Rules, Policy, and Stringency

Norm Semanko, Vice Chairman, Idaho Council on Industry and Environment (ICIE), explained that the group formed in 1989 and their primary purpose was to facilitate the use of fact and science in decision making and discussion of environmental policy. In the last several months the board and members decided it would be important to form, as part of the organization, an Environmental and Regulatory Affairs

Committee, working closely with the Idaho Department of Environmental Quality and the Idaho Legislature. Mr. Semanko introduced Roy Eiguren, a fellow member of the ICIE. **Roy Eiguren** outlined the process of the Administrative Procedures Act as it is currently constituted by statute and how it has been interpreted by the Idaho Supreme Court. **Vice Chairman Broadsword** asked about the committee rejecting a rule at an agency's insistence and how that contrasts with legislative intent. **Mr. Eiguren** responded that he assumes the agency provided the committee information as to why the rule may not have met legislative intent. **Senator Darrington** asked if a legislator can create a resolution to reject a rule that is not before a committee as part of a rules review. **Mr. Eiguren** responded that he feels a person can do that, citing Mead v. Arnell.

Mr. Eiguren introduced Brent Olmstead. **Brent Olmstead**, Executive Director, Milk Producers of Idaho, discussed stringency in Idaho environmental law. For nearly a quarter century Idaho environmental law has contained provisions that prevent the state's regulators from adopting rules that impose requirements that are more severe than imposed by the federal government. These provisions assure that Idaho will comply with all requirements imposed by the federal government but will not exceed those requirements without direct involvement of the legislature. This prevents an unelected bureaucracy from usurping the authority of the legislature to set state environmental policy.

Dr. Joan Cloonan, Secretary/Treasurer, ICIE, explained rules versus guidance procedures. Rule: Idaho Code 67-5201(19) defines a rule as the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes: (a) law or policy; or (b) the procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule. Guidance: Idaho Code 67-5250 defines what is meant by guidance document: Unless otherwise prohibited by any provision of law, each agency shall index, by subject, all agency guidance documents. The index and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, "agency guidance" means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. "Agency guidance" shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority. In short, the rule sets the standard and the guidance suggests ways to get there.

Mr. Semanko introduced some of the office staff. **Chairman Lodge** and **Vice Chairman Broadsword** thanked Toni Hardesty, Director, Idaho Department of Environment Quality, for being present at the meeting.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

RULES

16-0304-0602 Relating to Rules Governing the Food Stamp Program in Idaho

John Wheeler, Food Stamp Program, Department of Health and Welfare, reminded the committee that the Food Stamp Program is about helping people feed their families and that the docket is about removing the barriers to the program/simplifying the method in which complex types of income are counted for eligibility. Idaho remains the eighth hungriest state in the nation and only 58% of families who qualify for Food Stamps are actually receiving them. Idaho also ranks as the second most improved state regarding error rate which means that the appropriate people are receiving the appropriate amount of Food Stamps. The docket also addresses those failing to comply with work program requirements and for quitting a job without good cause, in addition to housekeeping items. **Vice Chairman Broadsword** asked about medical bill amounts that might count against the Food Stamp recipient. **Mr. Wheeler** explained that there is a medical expense deduction allowed for elderly and disabled individuals across the program.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to accept the rule changes for 16-0304-0602. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

16-0304-0601 Relating to Rules Governing the Food Stamp Program in Idaho

Rosie Andueza, Food Stamp Program Manager, Department of Health and Welfare, urged the committee to approve the rule change as the current rule on calculating vehicle resource limits has not been adjusted for inflation in 30 years and is a barrier for families applying for the food stamp program. In Idaho, applicants are held to a vehicle limit set in 1977 of \$4,500, the amount of a new car during that year. That amount has only been raised once during the 1990's, i.e., owning even a modest vehicle today can render a household ineligible for food stamps. **Vice Chairman Broadsword** thanked Ms. Andueza for bringing this rule change forward, which she feels is long overdue. **Senator Darrington** asked if there was opposition to this rule change and wanted to know how the funding works. **Ms. Andueza** explained that the Food Stamp Program is 100% federally funded and administratively, the state pays 50% and the federal government pays 50%. **Senator Darrington** asked how adopting this rule would impact Idaho. **Ms. Andueza** explained that it would be almost negligible. **Senator Darrington** asked the guests if there was anyone present that was opposed to the rule change. **Vice Chairman Broadsword** recognized that there were no replies.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION **Senator Coiner** moved to accept the rule changes for 16-0304-0601. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

16-0308-0601 Relating to Temporary Assistance for Families in Idaho (TAFI), Fee Rule

Genie Sue Weppner, Program Manager, Department of Welfare, stated that the proposed rule change would align the Temporary Assistance for Families in Idaho (TAFI) program vehicle rules with Food Stamp rules, allowing vulnerable families to receive the supportive services necessary for them to achieve self-reliance.

MOTION **Senator Werk** moved to accept the rule changes for 16-0308-0601. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

MINUTES: **Senator Hammond** moved to accept the minutes dated January 11, 2007. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:15 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 18, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:08 p.m.

GUESTS: See an attached sign-in sheet.

PRESENTATION Leslie Clement, Administrator, Division of Medicaid, Department of Health and Welfare, reported on Medicaid Bills passed during the 2006 Legislative Session. She explained that the Medicaid Simplification Act, House Bill 776, directed the department to break apart the “one size fits all” model and develop health benefits for Medicaid participants based on their health needs. Congress has also been working toward federal Medicaid reform and the product of their work is referred to as the Deficit Reduction Act. Within the Deficit Reduction Act are “benchmark” plans, i.e., the state’s flexibility to tailor benefits as envisioned by Idaho. Idaho has two state plans: One under Title 19 of the Social Security Act, the traditional Medicaid entitlement program, and Title 21, traditionally known as the Children’s Health Insurance Program (CHIP) and for those with higher incomes. The Department of Health and Welfare amended those two plans, creating three benchmark plans to align with the statutes: The basic plan, designed for those of average health; the enhanced plan, designed to meet special health needs or those with disabilities; and the coordinated plan, integrating benefits with Medicare. The total annual enrollment in Idaho Medicaid is approximately 177,000 individuals. To date, 30,000 individuals have been enrolled into the new benchmark plans and all enrollees will be in the new plans by the end of this fiscal year.

Ms. Clement walked the committee through an extensive document providing a status report of the initiatives undertaken as part of Idaho’s Medicaid reform, identifying the related legislation and implementation dates. **Senator Darrington** asked how far Idaho has progressed with the concept of self-determination. **Ms. Clement** stated that a rule chapter would be presented during the 2007 session titled, “Consumer Directive Services.” Self-directed services are a new service option for adults with developmental disabilities that currently rely on traditional Medicaid providers for services. These rules do not expand eligibility or costs; it is

budget-neutral. **Senator Darrington** inquired about the cost effectiveness and the timing of said concept. **Ms. Clement** confirmed that about one year was the estimate of how long it would take to finalize the details. **Chairman Lodge** asked how many enrollees were currently signed up. **Ms. Clement** stated that currently, 300 adults have opted into premium assistance. By removing an administrative barrier that has discouraged employer participation, it is believed that 1,000 adults, who want to choose this premium assistance option, can be reached. 1,000 is the number identified in the statute that caps enrollment into the premium assistance program for adults. There is no cap on children who can opt into premium assistance. Currently there are 2,500 children in the program. **Ms. Clement** introduced Patti Campbell.

Patti Campbell, Project Manager, Division of Medicaid, Department of Health and Welfare, stated that the purpose of HCR 48 is to appropriate mental health benefits, encouraging the department to match mental health benefits to client needs while ensuring resources are directed to those Idahoans whom most need Medicaid services. **Chairman Lodge** asked for the definition of partial care. **Ms. Campbell** explained that partial care has been used to define day treatment and that if there is a mental health need, the individual would be moved into the enhanced plan. **Ms. Campbell** defined the purpose of HCR 50, relating to premium payments and related funding, as encouraging the Department of Health and Welfare to implement premiums for those Medicaid participants in the category of low income children and working aged adults (Medicaid Basic Plan) who have family incomes above 133% of the federal poverty guidelines. **Senator Bair** asked for a definition of poverty level. **Ms. Campbell** explained the amount changes each year. Currently, for a family of one: \$1,511; for a family of two: \$2,035; for a family of three: \$2,559. Both gross and family income are reviewed.

Ms. Clement spoke about HCR 51 relating to selective contracting and stated that it encourages the Department of Health and Welfare to pursue selective contracting with a limited number of providers of certain Medicaid products and services in order to realize efficiencies and cost savings. **Chairman Lodge** asked if the contracting included dentists, dental insurance companies, or similar. **Ms. Clement** explained dental plan administrators and similar lines such as Delta Dental or Willamette Dental, would be sought. **Vice Chairman Broadsword** commented on transportation issues discussed last year and stated that even participants noted that money was being wasted. **Vice Chairman Broadsword** asked that if, while working on a brokerage plan, problems with transportation reimbursement across the state had been addressed. **Ms. Clement** explained that the existing commercial/agency/individual rates had not changed but the rates would be replaced as they moved into the brokerage model. **Vice Chairman Broadsword** asked for clarification on how rural areas with no outlet for transportation (aside from the individual) would be handled. **Ms. Clement** responded that the transportation brokerage system was intended to use all levels of transportation provided (that exist), just coordinated. **Chairman Lodge** asked if those living in rural areas would be asked to move closer to metropolitan areas where frequent services were provided. **Ms. Clement** stated that

participants would not be asked to move but it is recommended that they use the closest resources geographically. **Ms. Clement** defined the purpose of HCR 49, relating to Medicaid-Medicare coordinated benefits, encouraging the Department of Health and Welfare to implement programs that integrate services for financing Medicare-excluded prescription drugs covered under Idaho Medicaid, as well as create a seamless delivery system for prescription drug benefits for individuals dually eligible for Medicare and Medicaid in order to reduce program costs.

Ms. Campbell spoke about HCR 52 relating to long-term care counseling options, encouraging the Department of Health and Welfare to proceed with development of a long-term care counseling program as part of the planned "Aging Connections" initiative. **Vice Chairman Broadword** reminded the committee that "Aging Connections" appeared on the front page of the newspaper this past week. **Ms. Campbell** defined the purpose of HCR 53 relating to requirements for Medicare enrollment. In order to fulfill Medicaid's role as the payer of last resort for Idahoans, the Legislature encourages the department to require Medicare-eligible individuals to enroll in Medicare as a condition of eligibility for Idaho Medicaid. **Senator Darrington** asked how approval from the Center for Medicare and Medicaid Services (CMS) - Seattle, during the promulgation stage, works. **Ms. Campbell** responded that there is a timeline provided when a state plan amendment is submitted. For example, if an amendment is implemented in January, as long as it is sent to CMS by the end of March, that would be satisfactory.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

RULES

16-0612-0602

Relating to Rules Governing the Idaho Child Care Program (ICCP), Rewrite

Genie Sue Weppner, Program Manager, Department of Welfare, stated that the proposed changes to the Idaho Child Care Program rules will serve to modernize the Idaho Child Care Program and target the subsidy to low-income working families and promote self-sufficiency. In addition to these recommendations, the creation of the new Welfare Reform Regulations in 1995 required hundreds of thousands of families in the United States to go to work. At that time, it was recognized how important it was to have child care subsidies available to allow low income families to secure child care while they prepared for work, searched for work, and obtained employment. Consequently, child care funding is tied to welfare reform funding. The ICCP program is funded through a block grant which is fixed and Idaho currently spends the entire grant. In order to offset the increased costs related to raising the poverty rate and adjusting the co-pay sliding scale, it is proposed that the years for post-secondary education be limited to two years and students work ten hours per week in order for education to be an eligible activity. Recent studies of populations entering the work force indicate that individuals who prepare for the workforce by combining work and education are more

likely to succeed. Additionally, limiting the length of time post-secondary students can receive child care assistance will emphasize the urgency for low-income families to become employed and gain independence from government programs. It is believed that the efforts to modernize the ICCP program will result in no additional costs while targeting the subsidy to vulnerable low income working families.

Vice Chairman Broadsword asked for a description of the guidelines for the Temporary Assistance for Needy Families (TANF) funds and the federal government requirements for using them. **Ms. Weppner** explained that with the TANF funds, Idaho is required to meet participation rates for families who are receiving low income cash assistance and 50% of the individuals must be participating in work requirements. In Idaho we limit the number of months those families can receive cash assistance to 24 months; a flat amount of \$309 is paid per family regardless of family size. Those individuals are referred to enhanced work services contractors and regardless of what their situation is, they must participate in something that leads them to self-sufficiency. **Vice Chairman Broadsword** asked for clarification of the \$309 amount. **Ms. Weppner** responded that the philosophy is that most any job would earn more than \$309 and work is the only way for someone to find their way out of poverty.

Senator Hammond asked if 24 months of schooling vs. four years is discouraging to someone that could potentially make more money, thus contributing to and benefitting the state, with a baccalaureate degree. **Ms. Weppner** explained that while secondary education is of much value, the child care subsidy was intended to help working families maintain and find employment, who desperately need this help. The philosophy is that students in a junior/senior year are eligible/can access slightly higher loan programs and support services; it is also believed that individuals who get a two-year program under their belt are also capable of earning a decent wage. The low income working families that are in the program don't necessarily have the options available to them as college students do.

Senator Hammond asked how many of the clients fall into the four-year program versus the numbers that are not pursuing a degree. **Ms. Weppner** responded that while the numbers of students/number of students who are working can be provided, the students enrolled in vocational programs, etc., cannot be broken down out of their tracking system. **Senator Darrington** stated that he believes, for the Office of Performance Evaluations (OPE) to be involved, their function is to determine whether or not the program works according to law. **Ms. Weppner** explained her understanding of the recommendation from OPE as the intention of the child care subsidy to support the events following welfare reform, i.e., many people who never went to work and didn't need child care would now be taking low paying jobs, needing childcare. OPE did not make a recommendation as to how that would be achieved per se, just that it would need to be achieved, definitely. **Senator Werk** inquired as to the number of students who might be affected by this rule change. **Ms. Weppner** commented that the total number of students currently

utilizing the program are, on average, 1297 students per month. **Senator Kelly** asked how many people were participating as a whole. **Ms. Weppner** responded the average monthly children served is over 8000. **Vice Chairman Broadsword** asked for clarification of numbers of families served. **Ms. Weppner** estimated that an average of 4602 individuals were served in 2006. **Senator Werk** asked how much money will need to be made up in order to accept the changes to the rule. **Ms. Weppner** explained that the amount estimated is \$3.3 million. **Senator Werk** asked if colleges/universities had been involved in discussions regarding the changes to the program and/or alternative funding sources. **Ms. Weppner** commented that the Idaho Child Care Advisory Panel was comprised of child care providers/advocates as well as two directors of child care centers on college campuses. **Chairman Lodge** asked if we need \$3.3 million in funding in addition to the \$31 million that we already provide in child care. **Ms. Weppner** explained that the cost of raising the poverty level, market rate, and changing the sliding fee scale would need the \$3.3 million, as currently all of the money is spent on subsidy. **Vice Chairman Broadsword** asked how general fund dollars are used. **Ms. Weppner** explained that the department's requirement for the Child Care Development Fund is that in order to draw down the federal funds, the maintenance and effort portion must first be spent.

Michael Pearson, Budget Analyst, Department of Health and Welfare, clarified the way the child care block grant works; Maintenance of Effort is \$1.2 million, which is all state monies and must be spent, and \$3.6 million, which is matching. The matching portion is included in the state's budget within the child care development plan as a whole. **Senator McGee** asked for clarification on how many people are working and going to school within the ICCP program. **Ms. Weppner** responded that within the ICCP program, 86.1% are employed, 20% are in training or going to college, and 9.2% attend college and work. **Senator Werk** asked if the "state" dollars being referred to are the general fund dollars. **Mr. Pearson** confirmed yes. **Senator Werk** asked if any other sources of funding had been explored in order to offset the money needed to implement the rule. **Ms. Weppner** responded no, not specifically for child care subsidies.

Ross Borden, Government Affairs, Boise State University, stood in opposition to the rule change.

Senator Darrington addressed the guests by asking them if, when giving testimony, they might be willing to suggest how we might come into compliance with federal and state welfare reform without a large increase in state funds, in order to maintain students staying in school all four years with ICCP assistance. **Senator Werk** asked Ms. Weppner if we were out of compliance with federal statutes. **Ms. Weppner** referred back to the Office of Performance Evaluations analysis, recommending that Idaho's poverty rates were extremely antiquated and they must be raised, and by not raising the poverty rates the department was failing to meet the needs of the population that the program was designed for.

Leah Barrett, Student Affairs, Boise State University, stood in opposition

to the rule change. **Vice Chairman Broadsword** asked if the university provided child care, if there was a discount for students attending, and if students were used as volunteers. **Ms. Barrett** responded that there is child care at Boise State, students receive a discount, and student volunteers hadn't been sought due to stringent accreditations required of providers. **Chairman Lodge** asked if the university would be willing to develop/seek out additional child care opportunities for the students. **Ms. Barrett** responded yes. **Chairman Lodge** suggested the increased need for scholarships, vehicle and living expenses, i.e., heavy community volunteer involvement that enables students to pursue an education, child care being a large facet of what is needed. **Senator Werk** asked if sister institutions also have child care centers. Ms. Barrett responded that she believes all of them provide child care but is uncertain about staff accreditation requirements at each location.

Kent Kunz, Director of Government Relations, Idaho State University, stood in opposition to the rule change. He suggested to the committee that the rule is a revenue neutral proposal and neither more or less dollars are spent, even if the rule is adopted; the ICCP funds could be directed to one segment of the population, also known as the working poor, or directed to another segment, the student population.

Senator Werk cited the summary from the OPE review of the Idaho Child Care Program dated September 2002, specifically that the report does not state that the program is out of compliance per se. **Vice Chairman Broadsword** reminded the committee that the report cited by Senator Werk may not be the most recent report, and reinforced the recommendation that Idaho's poverty rates were extremely antiquated and they must be raised. By not raising the poverty rates the department was failing to meet the needs of the population that the program was designed for, i.e., the working poor.

Karen Mason, Executive Director, Idaho Association for the Education of Young Children, stood in support of the rule change.

Will Rainford, Legislative Advocate, representing the Roman Catholic Diocese of Boise, stood in opposition to the rule change. Mr. Rainford also cited a study by Gary Becker, Nobel Prize laureate, as showing that every dollar invested in human capital, such as education, yields seven real dollars in return to society.

Jenna Clark, Student, stood in opposition to the rule change.

Claudia Thompson, Student, stood in opposition to the rule change.

Bill Walker, Deputy Director, Department of Health and Welfare, explained that the four years of student use of ICCP benefits crowd out the number of low-income working families who have access to this service. The concern of the department is that there is only a flat amount of money available today; adjustments must be made in a cost-neutral fashion, all the while still preserving some of the benefit for college

students. While the department values higher education, the ICCP program is a “work first” program. **Senator Kelly** asked if the federal block grant fund is contingent on raising the poverty level. **Ms. Weppner** explained that it is not a federal requirement, however, every two years the department must submit a plan and in that period of time the department is evaluated to see if policies are being created that are truly serving the populations the program was designed for. **Senator McGee** asked if the “normal” rule making process was followed in this instance and if public comment was accepted. **Mr. Walker** referred to the rule book for the details on this rule and deferred to Ms. Weppner for comment. **Ms. Weppner** stated that the majority of the planning was done in conjunction with the Idaho Child Care Advisory Panel and public comment had been invited.

Senator Darrington offered to go on record as restating that, after comments from Senator Werk, we may not be out of federal compliance, and that the rule change is, in fact, revenue neutral. **Senator McGee** stated that he struggles with the decision whether to help provide an associate degree or a bachelor’s degree, and if the state should be aiding in child care. **Vice Chairman Broadsword** asked the Department of Health and Welfare if there are ideas/suggestions regarding grants or other funding streams that the state could apply for, benefitting the students that might be left out if this rule is adopted. **Ms. Weppner** explained that she is always on the lookout for subsidies. **Senator Bair** inquired as to the protocol for rejecting portions of a rule. **Senator Darrington** confirmed that the committee may choose which section they would reject, by line item. **Senator Kelly** advised the group that she would not feel comfortable rejecting sections before consulting with the Office of Administrative Rules. **Senator Hammond** suggested that the rule be held until higher education representatives and the Department of Health and Welfare may be able to develop further solutions. **Senator McGee** reminded the committee that there is a process for commenting on rules in this state and any avoidance to the normal public comment period is frustrating, i.e., those discussions should take place long before we reach this stage of the rule making process. **Vice Chairman Broadsword** restated that it is her hope that there are many interested at the college/university level who would work closely with the Department of Health and Welfare to come up with solutions assisting individuals with two years of college left.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved, seconded by **Senator McGee**, that the vote relating to docket 16-0612-0602, be held for one week from January 18, 2007, until higher education institutions and the Department of Health and Welfare can discuss methods of resolution, without actually having to arrive at a final decision within that time. The motion carried by **voice vote**.

16-0612-0601

Relating to Rules Governing the Idaho Child Care Program (ICCP),
Repeal

Supporting documents related to this testimony have been archived and
can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved, seconded by **Senator McGee**, that the vote
relating to docket 16-0612-0601, be held for one week from January 18,
2007, until higher education institutions and the Department of Health and
Welfare can discuss methods of resolution, without actually having to
arrive at a final decision within that time. The motion carried by **voice
vote**.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 5:19 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the
Committee Secretary's Office until the end of the session. After that time the material will be on
file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 22, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:08 p.m.

GUESTS: See an attached sign-in sheet.

PRESENTATION Jerry Davis, Executive Director, Idaho State Dental Association
"Floss Across America"

Jerry Davis, Executive Director, Idaho State Dental Association, introduced Dr. Rich Bailey, DMD. **Dr. Bailey** spoke about "Floss Across America," his national oral health program dedicated to teaching children the importance of good oral health habits with a primary focus on flossing. The foundation motto is "No Smile Left Behind." Dr. Bailey explained that he maintains a small town practice in Idaho and balances his time between dentistry and public speaking, some of which includes his wacky creation, Billy-Bob Teeth. Dr. Bailey also explained that he feels the younger we can start a healthy habit the more likely we are to carry it with us for a lifetime, thus, the program takes place in classrooms. Dr. Bailey asked for the support of the committee and the state during Dental Awareness Month in February, as an enormous spool of floss will be driven from the Pacific Ocean to the Atlantic Ocean in the flagship vehicle, "Flossy the Flossmobile," in hopes of enrolling as many schools as possible into the program. **Chairman Lodge** commented on the possibility of a Senate Concurrent Resolution that may be drafted in support of the cause.

RULES

15-0120-0601 Relating to Rules Governing Area Agency on Aging (AAA) Operations

Sarah Scott, Manager, Program Operations Unit, Idaho Commission on Aging, stated that during the 2004 Legislative Session, rules governing Area Agency on Aging Operations Contract Management

Requirements were changed to allow AAA's to provide "consumer choice" to their clients. This meant that there could be several providers for a service, rather than just one, allowing the client to choose his or her provider. The benefits of consumer choice include the following: clients can choose the provider with which they are most comfortable; new business opportunities are available for small providers who cannot service an entire planning/service area; providers are encouraged to provide optimum service to retain clients; and more services are available in rural areas. As a result of the change to consumer choice, service providers now vary from those that serve many clients to those serving only a few. AAA's must monitor the administrative and service delivery activities of service providers in order to be certain that clients are receiving appropriate services and that programs operate with full accountability, in accordance with the Statement of Work defined in AAA service provider contracts and with federal/state requirements. Ms. Scott explained that the proposed changes mean that an AAA must undertake desk monitoring of program and fiscal information for all service providers, and that such monitoring shall be performed no less than once per quarter, and would include the following: review of client rosters and invoices for completeness/accuracy; comparison of actual service units provided against authorized service units; review of participant feedback; and surveying the clients of a service provider in order to determine client satisfaction. The proposed changes to the rules also mean that the AAA must conduct a formal, on-site assessment every other year for each contractor that receives \$50,000 or more in combined federal and state funds during a year. Within each two-year assessment cycle, contractors and service providers shall be monitored in regard to compliance with the following: the contract into which the service provider has entered; the comparison of projected, authorized, or contracted service levels with actual units of service the provider has delivered; review of previously noted deficiencies or other items cited in prior formal and /or special assessments or desk monitoring; review of any problems that occurred during the current assessment cycle; random sampling of records to verify accuracy of program and fiscal reports; review of participant complaints and of the provider's mechanisms for handling complaints; review of the case management method for determining client satisfaction; and assurance of the provider's compliance with applicable federal/state laws/regulations in conjunction with program guidelines by observing actual program operations on site. **Vice Chairman Broadword** asked if changes to the rule would result in a cost savings to the agencies. **Ms. Scott** explained that if she were to go back and ask each AAA for this information it could be provided.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to adopt the rule changes for docket 15-0120-0601. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

16-0301-0602

Relating to Eligibility for Health Care Assistance for Families and Children, Rewrite

Damaris Borden, Program Specialist, Division of Welfare, Department of Health and Welfare, explained that a chapter of the rule has been rewritten to reflect the legislative intent in the Medicaid Simplification Act and to improve readability/align with federal policy. It is believed that these rule changes play a part in the restructure of Idaho Medicaid to improve health outcomes for participants while balancing access, quality, and cost containment. **Senator Werk** asked for clarification regarding citizenship documentation and what types are accepted since all Medicaid participants who claim to be U.S. citizens must provide proof of citizenship and identity. **Ms. Borden** explained that proof of citizenship entails a passport or certificate of naturalization and secondary items would include medical records or a birth certificate. **Vice Chairman Broadword** asked for clarification regarding school-issued identification. **Ms. Borden** explained that for children under 16, school records are “readily available” forms of identification. **Senator Kelly** asked if the requirements that were being added to this rule are a reflection of federal regulation and/or if the proposed changes deviate from the federal requirements in any way. **Ms. Borden** explained that the rule changes were in response to the federal Medicaid modernization project and that the changes did not deviate from the federal regulations. **Senator Werk** asked if a U.S. passport could stand alone as positive identification. **Ms. Borden** responded yes as most passports also contain a photo.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Werk moved to approve the rule changes for docket 16-0301-0602. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

16-0301-0601

Relating to Eligibility for Health Care Assistance for Families and Children, Repeal

Damaris Borden, Program Specialist, Division of Welfare, Department of Health and Welfare, asked for the committee’s approval to repeal the chapter of rules as part of the process for implementing the Idaho Medicaid Simplification Act. **Senator Darrington** asked if docket 16-0301-0602 would be replaced by 16-0301-0601. **Ms. Borden** confirmed yes.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Coiner moved to approve the rule changes for docket 16-0301-0601. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

Patti Campbell, Project Manager, Division of Medicaid, Department of Health and Welfare, presented an outline titled, "Example of Shuffle and Changes in Rules, Medicaid Reform 2006, Chapter 9," in order to explain several bills that were passed to modernize Medicaid, focusing on prevention, wellness, and responsibility. Of the many proposed changes, the last change pertains to how school-based services are paid for. School-based services are health-related services provided in the schools for Medicaid children, such as speech therapy. Part of the change pertains to how the schools are reimbursed to comply with federal requirements around Inter-Governmental Transfers (IGT). The other change clarifies that if the service was provided in the school it must be billed by the school. This policy has been in place since early 2000 and only recently have private agencies been identified as billing for services which are provided in the schools. Therefore, policy was clarified that these services are to be billed by the school. The services can be and are still provided in the schools, but the school controls and contracts for those health-related services to ensure coordinated/unduplicated care. **Senator Darrington** asked if these are temporary or pending rules. **Ms. Campbell** stated that they are pending rules. **Senator Darrington** asked if there are going to be people, under the proposed rewrite, who are going to be denied benefits that have been receiving benefits. **Ms. Campbell** explained that no one should be denied benefits as the eligibility criteria have not changed. Instead, individuals will be placed into plans based on their health needs which could affect services. **Senator Hammond** asked for clarification regarding the different types of plans. **Ms. Campbell** stated that the new plans are the Medicaid Basic Plan for individuals who have average health needs, the Enhanced Plan for individuals with disabilities or special health needs, and the Medicare-Medicaid Coordinated Plan for individuals who are dually enrolled in Medicare and Medicaid. **Vice Chairman Broadsword** asked if school districts are required to provide school-based services. **Ms. Campbell** commented that they are not required to act as the provider. **Senator Darrington** asked if school districts could opt in/out of the Medicaid services. **Ms. Campbell** concurred yes, school districts can opt in or out. **Vice Chairman Broadsword** stated, from the rules, that if a school district does not deliver the services identified on the plan then they must contract with a service provider to deliver the services and asked for clarification. **Ms. Campbell** explained that the school either has to provide the service or contract with someone in order to provide the service; this should prevent duplication of service and provide a better coordination of care.

Arthur Evans, Developmental Program Manager, Advocates for Inclusion, stood in opposition to the rule, and asked the committee to delay the adoption/implementation of the rule changes, specifically

related to contracting. Mr. Evans stated that schools concentrate and specialize in academics and education while developmental therapy technicians in the school setting are, by rule, required to work on increasing a child's ability in specific functional domains. It is felt that the possibility of schools providing educational services to children as they normally do and then bill the services as developmental therapy in the classroom could create significant ethical and legal dilemmas.

Vice Chairman Broadsword asked Mr. Evans if he is representing Developmental Disability Agencies (DDA's). **Mr. Evans** explained that while he is not an "official" representative, he is a part of the Idaho Association of Developmental Disabilities Agencies, which he believes has written a formal letter to the Department of Health and Welfare regarding the rule changes. **Vice Chairman Broadsword** asked Mr. Evans if he objects to section 856 in its entirety. **Mr. Evans** responded that he is in favor of that section. **Mr. Evans** commented that the impact proposed rule changes will have on children who currently receive developmental therapy, intensive behavioral intervention, and psychosocial rehabilitation services have not been adequately assessed. **Senator Darrington** asked Mr. Evans if he feels there are going to be people, under the proposed rewrite, who are going to be denied benefits that have been receiving benefits. **Mr. Evans** explained that his experience is that schools do not deliver services in the same manner that a DDA would; representatives of DDA's would like to be invited to the table to discuss further. Mr. Evans reinforced that his motivation for additional time to review the rule is not motivated by dollars; his observations are that there is a significant difference in the way that a DDA would deliver service versus the manner in which a school would deliver the service. **Vice Chairman Broadsword** stated she interprets the rule as meaning that there is nothing to prevent the school from contracting with a specific DDA, i.e., the decision is local and not one made by the state. **Mr. Evans** explained that while it doesn't prevent a school from receiving the service, the fear is that the school has the option of saying yes or no, even after a parent has requested the service of a particular DDA.

Melissa Crow, Parent Advocate and Member of the Early Childhood Coordinating Council, stood in opposition to the rule change. **Senator Hammond** asked Ms. Crow what would lead someone to believe there will be a loss of care if the rule is implemented. **Ms. Crow** commented that her two autistic children are involved in the public school system and she has already experienced even her most basic requests as being neglected. **Senator Werk** asked for clarification if, according to her testimony, Ms. Crow believed the current rule was in violation of federal statutes. **Ms. Crow** explained that she believes the pending rule excludes a DDA from participation in the school.

Barbara Nash, Parent Advocate and Special Education Teacher, stood in opposition to the rule change.

Rob Winslow, Executive Director, Idaho Association of School Administrators, stood in support of the rule change.

John Hyslop, Parent Advocate and subscriber of services provided by Advocates for Inclusion, stood in opposition to the rule change. Mr. Hyslop does not feel as if parent representatives have been given enough opportunity to be apprised of the details surrounding the rule change. **Senator Werk** asked if Mr. Hyslop's children had taken advantage of Intensive Behavioral Intervention (IBI) services. **Mr. Hyslop** responded yes.

Dr. Donna Vakili, Parent Advocate and School Administrator, stood in opposition to the rule change. **Senator Hammond** asked if Dr. Vakili is concerned about the school opting to deliver those services themselves versus a DDA. **Dr. Vakili** responded yes, she feels she is losing some control as to who will interact with her child.

Suzanna Dailey, Parent Advocate, Paraprofessional Educator, and Special Education Student, stood in opposition to the rule change. **Senator Werk** inquired as to Ms. Dailey's specific objections of the rule change. **Ms. Dailey** clarified that she believes there are two major consequences by adopting the rule change; services that her child receives will cease to exist and schools are in the position to pay their employees with Medicaid funds minus oversight to ensure that all facets of the plan are being administered as written.

Dr. Laura Sandidge, Administrator, Advocates for Inclusion, stood in opposition to the rule change. Dr. Sandidge commented that her main conflict is that parent representatives and the DDA community were not given the opportunity to assist with the development of this rule change. **Chairman Lodge** asked what would lead a person to believe that schools are not accountable regarding how Medicaid dollars are spent. **Dr. Sandidge** responded that in her experience schools have not been monitored nor audited. **Chairman Lodge** asked for clarification about the belief that, under the rule change, services would cease to exist. **Dr. Sandidge** stated that she feels schools will render educational assistance and stop short of developmental/behavioral advancement. **Vice Chairman Broadsword** asked if Dr. Sandidge felt that children might be worse off by their incorporation into the public school system. **Dr. Sandidge** explained that she is a very big proponent of the children being a part of the school system; educators need to educate and therapists need to provide the necessary therapy. Her concern is that educators would be educating and not be able to offer the developmental piece - both are extremely critical.

Marilyn Sword, Executive Director, Idaho Council on Development Disabilities, spoke in neutrality to the rule change. Ms. Sword spoke about how the council will monitor all sides of public policy moving forward.

Kim Hunter, Parent Advocate, stood in opposition to the rule change. **Senator Bair** asked for clarification on the charter school that Ms. Hunter was deterred from enrolling her child in. **Ms. Hunter** explained that when she discussed the details with the principal it was suggested that Ms. Hunter should probably seek out “something better” for her child. Ms. Hunter is most concerned with what happens when she asks for a specific provider and the school denies her request.

Ms. Campbell reminded the committee that the rule provides detailed qualifications for the providers, claims are monitored by the Department of Health and Welfare, IBI can still occur in schools and any of the services can also take place outside of the school.

Leslie Clement, Administrator, Division of Medicaid, Department of Health and Welfare, reinforced that there seems to be some misunderstanding regarding parental rights, meaning, the ability to approve Medicaid billings will not be removed; any services provided to their child in the school billed by Medicaid must be approved by the parent. Another misconception is that services must now be provided by people who work at the school, however, the same private agency can still provide the services in the schools. There is a need for increased collaboration between DDA providers and school-based services. **Senator McGee** asked if there will be a reduction in services if this rule is passed. **Ms. Clement** explained that this is not a cost-containment initiative, i.e., this is about coordination and collaboration with no fiscal impact. **Senator Werk** asked if the provisions in the docket violate federal law and if Idaho is in violation, can the state be subject to a lawsuit from parents who feel their children have lost services. **Ms. Clement** stated that the Department of Health and Welfare had to submit the Idaho Medicaid plan to the federal government for their review and approval and the plan was approved; if Idaho was found in violation they are subject to any consequences that follow. **Senator Hammond** inquired if parents can request a specific agency come and work with their child, in or out of school. **Ms. Clement** responded yes to both. **Senator Darrington** commented that he is in a good position, if these rules are approved, to determine what has happened to the services for one child, one year from today. While the committee has heard conflicting testimony, he will be watching the outcome closely.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Darrington moved to approve the rule changes for docket 16-0309-0604. The motion was seconded by **Senator McGee**. Further discussion was granted to **Vice Chairman Broadsword** who stated that it is her hope the Department of Health and Welfare would stay on top of this particular rule, monitoring the school implementation and working diligently to ensure the parent fears are addressed. The motion carried by **voice vote**.

16-0309-0603 Relating to the Rules Governing the Medical Assistance Program,
Repeal

MOTION **Senator Bair** moved to adopt the rule changes for docket 16-0309-0603. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

MINUTES: **Senator Werk** moved to approve the minutes dated January 15, 2007. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:33 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 23, 2007
TIME: 3:00 p.m.
PLACE: Room 437
MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly
MEMBERS ABSENT/ EXCUSED: None
CONVENED: Chairman Lodge called the meeting to order at 3:12 p.m.
GUESTS: See an attached sign-in sheet.

RULES

23-0101-0601

Relating to Rules of the Idaho Board of Nursing

Sandra Evans, Executive Director, Idaho State Board of Nursing, explained that the proposed changes to the docket include deleting the section describing the processes related to hearings before the Board, since these processes are provided for in the Idaho Administrative Procedures Act, Idaho Code Title 67, Chapter 52; relocating without change in any amounts, reference to specific fee amounts to the section of rules related to fees; general updating and housekeeping provisions to include citation corrections, numbering changes, wording clarification, and language consistency; expanding definitions related to patient abandonment and technicians/technologists; elaborating on various licensure procedures; revising provisions for limited licensure by spelling out the categories of limited licensure including the unique requirements for each category and to explain provisions for summary suspension of a limited license; add two additional grounds for disciplinary action; set forth a description of the peer review process required of certified nurse midwives, clinical nurse specialists and nurse practitioners as a condition of licensure renewal; and establish titles for graduate advanced practice professional nurses pending notice of national certification and/or results of criminal background checks. **Senator Werk** asked if the entire section describing the processes related to hearings before the Board would be replaced or located in another section. **Ms. Evans** responded that this section is addressed in the Administrative Procedures Act and would no longer be needed in this rule.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to adopt the rule changes for docket 23-0101-0601. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0310-0602

Relating to Medicaid Enhanced Plan Benefits for Participants with Special Health Needs, Rewrite

Paul Leary, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, explained that the proposed rules in this docket are being amended to meet part of the legislative intent of House Bill 776, the Medicaid Simplification Act, and HCR 48 passed by the 2006 Legislature. Specifically, these rules cover the Enhanced Benefit package for Medicaid participants with Disabilities or Special Health Needs and are in addition to the benefits available to individuals in the Basic Benefit Package. Enhanced mental health services are available only to Medicaid participants who have a clinical need for those services. A number of comments were received during the comment period and focused policy discussions that were hosted by the department. To comply with the intent of this rule, only comments that were consistent with existing policy and/or that met the intent of HB 776 or HCR 48 were entertained for this docket. As an example, during a discussion regarding school-based services, there was a recommendation to clarify our rules as related to who can be reimbursed. It has been a long-standing Medicaid policy that only school districts, charter schools and infant toddler program can be reimbursed for school-based services, i.e., any claim that comes into the automated system with a location of service identified as "school" from any provider other than a school district, charter school, or an infant toddler program is automatically denied. In short, this was a simple clarification of existing policy. Because there were comments from the mental health provider community, the department has invited the Mental Health Provider Association to a regular and ongoing monthly meeting with the Division of Medicaid not only to discuss comments received during this rule writing but to be considered during ongoing improvement efforts.

Chantel Jones, Licensed Clinical Professional Counselor, Idaho Mental Health Counseling Association, stood in opposition to this rule, specifically regarding the Enhanced Plan and that psychosocial rehabilitation requirements (PSR) for eligibility have been reshuffled under the clinic requirements for eligibility, limiting services. **Senator Werk** asked for the differences between the Enhanced Plan and the Basic Plan. **Ms. Jones** responded that under the Basic Plan, clients with a severe and persistent mental illness would not be able to receive services aside from the 26 that are offered within the Basic Plan, they would need to qualify with particular/limited diagnosis in order to access Enhanced Plan services. **Vice Chairman Broadsword** requested clarification regarding how many mental health service units are contained in the Enhanced Plan. **Mr. Leary** explained that there are 45 hours of psychotherapy per year and 36 hours of partial care per week within the Enhanced Plan. **Ms. Jones** reminded the committee that she presented this docket to the Health and Welfare Committee, House of Representatives, on January 22, 2007, and the docket was adopted with the exception of subsection 11202D,

Utilizing CAFAS Access of Eligibility Tools, and 11203A, Diagnostic Criteria for Adults. **Senator Darrington** asked if the Child and Adolescent Functional Assessment Scale (CAFAS) had been disallowed. **Ms. Jones** explained that PSR has traditionally used CAFAS for eligibility determination over the years while the clinics have not; clinics would be required to use the CAFAS under the reshuffle and many people in the clinical world disagree.

Dr. John Rusche, Physician and member of the Idaho House of Representatives, explained that some feel CAFAS is a monitoring tool versus a diagnostic tool, therefore, it should not be used to determine eligibility. Dr. Rusche stood in support of adopting the rule with the exception of subsection 11202 (paragraph D) and 11203 (paragraph A). Dr. Rusche asked for the rejection of these segments by the Senate Health and Welfare committee as they are not the intent of enabling legislation. If able to concur on the rejection, the Medicaid staff would be able to work with providers and submit a more appropriate criterion. **Vice Chairman Broadword** asked if the Department of Health and Welfare saw this proposal (accepting some of the rule and not all), as a workable, acceptable solution. **Dr. Rusche** responded that it appears a segment of rule, intended for psychosocial rehabilitation, was applied to all outpatient mental health services. This has been acknowledged and all are more than willing to work with the providers in working toward a more appropriate statement of eligibility criteria.

Krys Miley, Licensed Clinical Professional Counselor, stood in opposition to the rule. Ms. Miley cited the CAFAS limitations and shared her concerns of therapists treating eating disorders, specifically, that the Enhanced Plan has a very narrow list of eligible diagnoses and anorexia is not among them.

Kris Ellis, Legislative Advisor, Idaho Supportive Living Association, stood in opposition to the rule. Ms. Ellis requested that the committee delete the section relating to establishing accurate cost measurement for supported living and residential habilitation because the proposed cap for hourly support is arbitrarily set by the Department of Health and Welfare and inflexible. **Chairman Lodge** asked for clarification regarding the amount of the daily cap. **Ms. Ellis** explained the amount of \$190.00 per day has been deleted and added is "the maximum set daily amount established by the department." The \$190.00 is the policy; the concern is that the cap is not in the rule but the policy remains \$190.00 per day - each time the Department of Health and Welfare would raise that cap they wouldn't need to revisit the rules.

Senator Werk asked (of Senator Darrington) about separation of powers, specifically, if the Department of Health and Welfare were to decide that their limit would be set without the approval of the legislature, what the impact would be if there was a concurrent increase in overall Medicaid spending. **Senator Darrington** suggested the role of a rules and review subcommittee when needed and explained that an agency traditionally responds favorably to the wishes of a committee, whether it be by formal resolution or otherwise. Senator Darrington commented that he does not

believe there is a violation of the separation of powers. **Senator Kelly** reinforced that the legislature is able to extend, to the agency, as much or as little discretion on this particular issue; the agency is able to set a rate based on their own decision making process. If needed, a statute can be passed that would restrict their ability to do so, however. **Senator Werk** stated he is concerned about an item removed from the rule process becoming an internal department policy decision, removing it from the view of legislators. **Leslie Clement**, Administrator, Division of Medicaid, Department of Health and Welfare, explained that the Department of Health and Welfare would be willing to come back to the committee and present a report based on the reimbursement methodology and how rates are set. Ms. Clement reminded the committee that Idaho is a fee-for-service state with thousands of procedure codes - an area the legislature hasn't gone into before per se.

Mr. Leary concurs that the Department of Health and Welfare will address issues relating to PSR but would like to note that for mental health services, they are going to need a "wider door." **Senator Darrington** commented on individual eligibility for adults using the DSM4 scale (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition), and asked if there had been a change regarding the DSM4 or a change in present practice or the language had been transferred from another section/rule. **Mr. Leary** responded that the rules he is referring to address psychosocial rehabilitation services and not the mental health benefit. **Senator Darrington** voiced a great deal of concern regarding not applying CAFAS on a universal eligibility basis. **Senator Werk** commented that he is hopeful that the agencies collaborate to develop a standard statewide assessment for substance abuse and mental health, as recommended by the Mental Health and Substance Abuse Interim Committee for a target date of January 1, 2008. **Mr. Leary** assured the committee that the goal is to closely arrange the providers and the division of behavioral health. **Chairman Lodge** asked Mr. Leary if he agreed that subsections 11202D and 11203A should be stricken from the docket. **Mr. Leary** responded that he feels the docket would be acceptable with those deletions.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Chairman Lodge moved to adopt all sections of the rule changes for docket 16-0310-0602 with the exception of subsections 112.02D and 112.03A. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

16-0310-0601

Relating to Rules Governing Medicaid Provider Reimbursement in Idaho, Repeal

Paul Leary, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, reminded the committee that this is a chapter repeal only.

Supporting documents related to this testimony have been archived and

can be accessed in the office of the Committee Secretary.

MOTION

Senator Bair moved to accept the rule changes for docket 16-0310-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0310-0701

Relating to Medicaid Enhanced Plan Benefits

Paul Leary, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, requested that the temporary rule in the docket be extended with an effective date of January 1, 2007. Language was changed removing generality requiring criminal history checks for providers of Medicaid services who provide direct care or services to children and/or vulnerable adults. Additional language now needs to be added to the Medicaid rules that govern the Medicaid Enhanced Benefit Plan to assure that all providers who provide home and community-based services to vulnerable adults are required to complete a criminal history background check. Additionally, Senate Bill 1339 was passed by the 2006 legislature and removes the requirement for a physician's order for personal care services. Amendment to the medical assistance state plan has been approved by the Centers for Medicaid and Medicare Services.

Senator Hammond asked for clarification on availability to work while an individual is awaiting the results of the background check. **Mr. Leary** explained that the individual must undergo a background check first and foremost and as they are waiting for the results, the employer, at its discretion, may allow an individual to provide care or services on a provisional basis, as long as the application for a criminal history and background check is completed/notarized and the employer has reviewed the application for any disqualifying crimes or relevant records.

Chairman Lodge asked if the individual is required to work under close supervision. **Mr. Leary** commented that he was not aware of that specific provision but would research and follow up at a later time.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Chairman Lodge moved to accept the rule changes for docket 16-0310-0701. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

16-0313-0602

Relating to Consumer Directed Services, Rewrite

David Simnitt, Policy Team Member, Division of Medicaid, Department of Health and Welfare, stated that, through House Concurrent Resolution 12, the legislature instructed the Department to begin work on an option that would allow eligible participants to direct their own services and supports. During the last two years, the Department has worked in close collaboration with the Idaho Council on Developmental Disabilities, Comprehensive Advocacy Inc., and participants and their families to complete the initial design of this new option. The consumer-directed option provides a new and exciting opportunity for adults with

developmental disabilities to become more involved in making decisions about the services they receive and who they choose to deliver those services. The change to a consumer-directed service model is part of a national movement and the results have been impressive. Instead of the Department of Health and Welfare or the service providers making decisions for the participant, participants (and their support teams) make decisions for themselves. Participants who are empowered to direct their own services have more independence and freedom in planning their own lives, achieve better outcomes, and as a result become more self-directed. In addition to extensive negotiated rulemaking over the past two years, the Department held three public hearings across the state, gaining additional input. It was indicated that there is strong support from advocate groups and that participants and their families are excited about this new option. However, concerns were presented regarding a participant's ability to waive the criminal history check requirement for a community support worker, and the ability of a legal guardian to be paid as a community support worker. The pending rules reflect several enhancements as a result of this feedback.

Jim Baugh, Executive Director, Comprehensive Advocacy Inc., stood in support of the rule.

Tracy Warren, Program Specialist, Idaho Council on Developmental Disabilities, stood in support of the rule.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to adopt the rule changes for docket 16-0313-0602. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

16-0313-0601

Relating to Prior Authorization of Behavioral Health Services, Repeal

David Simnitt, Policy Team Member, Division of Medicaid, Department of Health and Welfare, reminded the Medicaid rule chapters were reorganized to reflect Medicaid Modernization as defined in statutes passed by the legislature in 2006 and authorized by the federal government through amendments to the state plan. The entire chapter of rules is being repealed effective July 1, 2006 as part of the process for implementing House Bill 776, the Idaho Medicaid Simplification Act. The rules governing prior authorization for behavioral health services (also known as Adult Developmental Disabilities Care Management) have been incorporated into IDAPA 16.03.10 – now called “Medicaid Enhanced Plan Benefits,” and can be found in Docket 16-0310-0602 also effective July 1, 2006. IDAPA 16.03.13 now contains rules for consumer-directed services.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator McGee moved to adopt the rule changes for docket 16-0313-0601. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:32 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 24, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:09 p.m.

GUESTS: See an attached sign-in sheet.

RS16589 Relating to the Trauma Registry

Steve Millard, President, Idaho Hospital Association, indicated the legislation would remove the January 1, 2008, sunset from trauma registry establishment law and that the sunset was placed on the act to allow time for determining if the data collected would actually meet the purpose of the law. The Department of Health and Welfare created an advisory committee for the purpose of a pilot program. By the time the Request for Proposal (RFP) went out to bid, the contractor was selected and the infrastructure acquired, developed and tested, there was not enough time before the law expired to fully test the system. **Senator Hammond** asked what the basis for collection is. **Mr. Millard** explained that this could be an issue that concerns physicians more so than a hospital in that there is no data regarding trauma cases before/during/after they enter a hospital; the registry is designed to collect data and link it on several levels. Additional time is needed for fine tuning of the system in Idaho. **Senator Werk** inquired as to the origin of the five-year sunset. **Mr. Millard** explained that a sunset time frame clause was thought to have been enough time to test the system.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION **Senator Coiner** moved to send RS16589 to print. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

RS16595 Relating to the Idaho Hospital Contribution Act

Steve Millard, President, Idaho Hospital Association, suggested the purpose of rulemaking was to leverage federal Medicaid funds by having private hospitals contribute to the state the amount necessary to match

federal funds that are available for reimbursement to hospitals. Those dollars would be used to enhance existing below-cost reimbursement to hospitals, thereby reducing the losses hospitals incur when they treat Medicaid patients. It should also reduce such losses being shifted to private payers and insurers. For this to be permissible under federal law and regulation, the hospital contribution must be mandatory. The legislation creates a hospital contribution fund to collect the contributions and the funds are then used as the state match to access available federal funds. When the federal funds are secured, they are paid to the contributing hospitals based upon the number of Medicaid patients they care for within a given year. In short, it is felt that hospitals are subsidizing Medicaid reform as they are taking care of patients but are not able to recoup their costs. **Vice Chairman Broadsword** asked for clarification regarding the contribution of private hospitals versus public hospitals. **Mr. Millard** stated that non-public (private) hospitals are those not owned by a government entity. The legislation would address 13 private hospitals in Idaho. Historically, public hospitals have utilized intergovernmental transfers in order to obtain the federal match and haven't needed the legislation. **Vice Chairman Broadsword** asked if the private hospitals were in favor of RS16595. **Mr. Millard** responded yes.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Werk moved to send RS16595 to print. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

RULES

41-0101-0601

Relating to the Rules of Panhandle District 1

Jerry Mason, Attorney from Coeur d'Alene, also representing the Panhandle Health District, explained the purpose of the changes for the rulemaking effort as (1) Extension of the Institutional Controls Program for the Bunker Hill Superfund site from the 21 square mile "box" to areas of the Coeur d'Alene Basin that are most likely to have been contaminated with heavy metals, (2) Introductory sections were added at the request of the Office of Administrative Rules in order to maintain consistency with other chapters of the Idaho Administrative Code, (3) The method for determining wastewater flows has been modified to require the use of square footage in a new structure or the number of bedrooms, whichever is greater, (4) The expansion or replacement of existing residential dwellings would be limited to an increase of square footage no more than 10% of the existing habitable space and allowing wastewater disposal systems that would merely be the "best possible" on the existing parcel, (5) An owner must get approval at the time of connection in order to connect to a previously installed subsurface wastewater system, (6) Change references from the Department of Health and Welfare to the Department of Environmental Quality wherever appropriate, (7) Clarify the existing rule regarding businesses that inventory regulated hazardous chemicals over the Rathdrum Prairie Aquifer and that they are subject to inspection of those chemicals on a biennial basis, (8) Changes in wording

have been made to make the text more readable or to provide general references to clarify that existing language would apply to both the “box” and the Coeur d’Alene Basin, and (9) Overlapping penalty sections in the existing rule have been eliminated. **Vice Chairman Broadsword** commented that a part of the program includes yard remediation, where a contractor is hired by the Department of Environmental Quality (DEQ) to pull up all items (plants, trees, one foot of topsoil, etc.) within an area thought to be contaminated. The concern is with the permitting required if a homeowner would like to repopulate that landscape or the surrounding area. **Mr. Mason** deferred to Terry Harwood, Executive Director, Basin Environmental Improvement Project Commission. **Mr. Harwood** explained that a permit for excavation is not required unless the dig exceeds one cubic yard. The Institutional Control Program (ICP) is set up to apply for properties that haven’t been tested. There are properties that have been tested but haven’t been remediated just yet but the Department of Environmental Quality and the Environmental Protection Agency can only get to so many at a time. **Vice Chairman Broadsword** asked if, for example, a yard had been tested and the back yard was deemed “clean” and the driveway “contaminated,” would the property be listed on the mandatory permit list. **Mr. Harwood** reminded the committee that a permit for excavation is not required unless the dig exceeds one cubic yard, so, for this example a permit would be needed. **Senator Kelly** inquired about the Record of Decision (ROD) regarding areas outside of the box versus inside the box. **Mr. Harwood** responded that areas outside of the box require an Institutional Control (IC), not so much an ICP per se. The Institutional Control is required in the ROD. The ROD is issued by the EPA with comments from the state, i.e., it is a federal action. **Senator Kelly** asked who would be paying for this. **Mr. Harwood** explained the process in the basin is going to be funded through a Memorandum of Agreement between the Panhandle Health District, the EPA, and the State of Idaho. **Vice Chairman Broadsword** asked what the state’s portion might be. **Mr. Harwood** stated that Idaho pays 10 percent of the remediation costs at a Superfund site. The breakdown is determined by whether it is considered Operation and Maintenance (the state pays the full cost) or remediation (the 90/10 percent applies). **Vice Chairman Broadsword** asked if the federal government picks up 90 percent of the cost for the necessary remediation in the case you go outside of the 21 square mile box (and it is still a part of the Superfund site). **Mr. Harwood** explained that a good example of a designated Superfund site changing from the box would be the area from Lookout Pass to the Columbia River (spanning 2 states) - the EPA is responsible for the 90 percent and the 10 percent would be split between Idaho and Washington. **Vice Chairman Broadsword** asked for clarification regarding recontamination circumstances not believed to be paid for by the federal government. **Mr. Harwood** pointed out if a flood is a failure of the remedy, then it can’t be considered under Operation and Maintenance. Mr. Harwood has been working with the Shoshone County Commissioners taking a complete inventory of flood protection devices in the valley. Additionally, they have been concentrating on how a 100-year flood could affect the remedies. The EPA also gave funding to work through that process. **Vice Chairman Broadsword** asked for an estimate of the time frame in hopes that the state would not be burdened

in the future. **Mr. Harwood** explained that the Superfund site has already been expanded, therefore a burden exists. How the state and the EPA negotiate determines the share of the costs. The ICP is separate from the state's liability under Superfund; once the ROD was issued the state took on 10 percent of the remedial cost of the dig at the Superfund site. The ICP is a process to protect the remedy from being contaminated by the activities of a person. **Senator Kelly** inquired if there had been public comment. **Mr. Mason** stated this was not a negotiated rulemaking process but it has not been without controversy. What this rule does is 'attempts' and 'intends.' So far (in the box) it has protected the community by providing evidence, which is partial removal, i.e., if you partially remove the contaminants and put in clean material and then walk away, whether the remedy disintegrates or not remains the question. In the commercial world it compromises everyone's ability to own/develop/convey property and the economy in the valley is affected. With this rule, three hearings were held but not attended. **Senator Darrington** commented about the mix of feelings between increased property values as a result of the Superfund cleanup and the improvement of economic development; on the other hand there is a large burden when an area needs to be cleaned up. **Mr. Mason** explained that the burden is on everyone; the complication remains a matter of what absolutely needs to be done in order to maintain a thriving economy. **Vice Chairman Broadsword** asked about small projects versus large projects and what constitutes a permit. **Mr. Hayward** stated that on smaller projects, while a permit may not be needed, the Panhandle Health District is still able to provide the removal service. **Vice Chairman Broadsword** asked about areas that are not included, such as Indian reservations and railroad properties. **Mr. Hayward** defined ICP management and how it relates to reservation areas and privately owned fee lands adjacent to reservations; railroads have their own consent decree under their circle of settlement (done before ICP was put in place). **Vice Chairman Broadsword** asked about areas affected by runoff (recontamination) who have previously been remediated. **Mr. Hayward** stated that they are remediated, again.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Coiner moved to approve docket [41-0101-0601](#). The motion was seconded by **Senator Werk**. Further discussion was granted to **Vice Chairman Broadsword** who commented that she cannot support the acceptance of the docket as it is felt that there is a significant burden posed to future legislatures as well as the citizens of Idaho. The motion carried by **voice vote** with **Vice Chairman Broadsword** voting nay.

16-0309-0701

Relating to Medicaid Basic Plan Benefits

Paul Leary, Deputy Administrator, Medicaid, Department of Health and Welfare, reported that House Bill 663, passed by the 2006 legislature directed the department to establish enforceable cost sharing in order to increase the awareness and responsibility of Medicaid participants for the cost of their health care and to encourage use of cost-effective care in the most appropriate setting. The proposed temporary rule enforceable co-

payments allowing hospitals to receive a co-payment for non-emergent use of the emergency room and emergency transportation providers to receive a co-payment for non-emergent use of emergency transportation. While no formal rule negotiations were held, a focused policy discussion was hosted by the department in August of 2006 and was attended by legislators, the Idaho Hospital Association, Idaho Medical Association, Idaho Citizen Action Network, Idaho State Pharmacy Association, and independent providers. There was general agreement and support of the department's direction that is reflected in the rulemaking. **Senator Werk** requested clarification about due process and potential disputes. **Mr. Leary** explained that any disputes regarding Medicaid are able to enter the appeals process through the Department of Health and Welfare. **Senator Werk** asked if there is a liability protection in the rule regarding emergency care in the hospital, i.e., how a bonafide emergency is determined. **Mr. Leary** stated that the protection for the hospital is through EMTALA (Emergency Medical Treatment and Labor Act) which calls for an emergency screening. **Senator Werk** asked for more detail concerning a physician in an emergency room; for instance, if a determination is made that there is no emergency and one does exist, how is the physician held harmless. **Mr. Leary** reinforced that the emergency screening process addresses the overall liability, however, when dealing with co-payments, there is federal legislation that outlines detailed procedures that a hospital must go through in order to collect a co-payment. **Senator Bair** asked for examples of co-payment amounts. **Mr. Leary** explained that three dollars is the nominal amount set by the Secretary of Health and Human Services and is set that way in order to include receiving payment for emergency room services from Title 19 recipients (who are typically exempt from co-payments). **Senator Bair** noted the amount was thought to be very low. **Mr. Leary** stated that co-payments are suggested in order to alter behavior/deter frivolousness.

Toni Lawson, Vice President, Government Relations, Idaho Hospital Association, stood in support of the rule change. Ms. Lawson reinforced that the request of a co-pay from a hospital is voluntary. **Senator Werk** commented that there could be a potential cost savings as the hospital is able to refuse the service for minor cases and ensure a continuity of care for both minor and major cases. **Vice Chairman Broadsword** stated that she assumes the hospital does not take the co-pay out of what they would normally be reimbursed. **Mr. Leary** commented that is correct and that now, for example, emergency transport is subject to a co-pay. Again, the concept is geared at altering behavior.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to adopt docket 16-0309-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0318-0701

Relating to Medicaid Cost-Sharing

Paul Leary, Deputy Administrator, Medicaid, Department of Health and Welfare, asked for an extension to the temporary rule as House Bill 663

directed the department to establish enforceable cost sharing in order to increase the awareness and responsibility of Medicaid participants for the cost of their health care and to encourage use of cost-effective care in the most appropriate setting. Temporary rule docket 16-0318-0701 is a companion docket to docket 16-0309-0701 previously presented and (1) Identifies which participants are subject to the co-pay provisions, and (2) Specifies the co-pay amount for services inappropriately accessed by the participant. **Vice Chairman Broadsword** asked about pregnant women under Title 19. **Mr. Leary** explained that pregnant women are an exempt category under Title 19.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Bair moved to accept the rule changes for docket 16-0318-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0318-0601

Relating to Medicaid Cost-Sharing

Paul Leary, Deputy Administrator, Medicaid, Department of Health and Welfare, requested approval of the pending rules as final as they are being amended to meet the legislative intent of House Concurrent Resolution 50 passed by the 2006 Legislature. These rules implement premiums for those Medicaid participants in the Medicaid Basic Benefit Plan (low income children and working age adults) who have family incomes between 133% and 150% of the federal poverty level. Participant cost sharing is an important tool for modernizing Medicaid benefit design and may increase Medicaid participants' ability to understand and use the private health insurance system. **Senator Werk** asked if the Child Health Insurance Program (CHIP) portions have been moved elsewhere. **Mr. Leary** stated that Medicaid and CHIP work as one now; the premium assistance rules in this chapter have been moved to Chapter 16. **Senator Werk** asked if there is a chance the successful branding of the CHIP program is being abandoned by the department. **Mr. Leary** detailed that the rules are for that population but the department is not abandoning that brand.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to adopt docket 16-0318-0601. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0318-0602

Relating to Medicaid Cost-Sharing

Paul Leary, Deputy Administrator, Medicaid, Department of Health and Welfare, communicated that many people with disabilities on Medicaid recognize that employment is the way to end their dependence on Medicaid and want to work. However, individuals with disabilities need medical insurance because of support needs and cannot risk losing their health coverage. Many employers do not provide insurance coverage so

individuals with disabilities must limit work hours to keep their Medicaid eligibility. One of the specific goals of House Bill 776, the Medicaid Simplification Act, is to provide opportunities for employment for individuals with disabilities. The 2006 Legislature passed House Bill 664 that added a new section to Idaho Code, 56-209n, titled "Medicaid for Workers with Disabilities." The rules in this docket implement the Medicaid for Workers with Disabilities Program that will help these individuals gradually reduce their reliance on Medicaid while increasing their work hours and income. The rule change in this docket imposes a premium for individuals with disabilities who are working. The premium is a sliding fee based on the Federal Poverty Guideline. These rules are effective January 1, 2007.

Vice Chairman Broadsword commented that she received a letter of support for the rule change from **Kelly Buckland**, Executive Director, Idaho State Independent Living Council.

Senator Bair asked about the fiscal impact and if there is an increase to the state general fund. **Mr. Leary** explained there would be an increase to the general fund requirement because individuals are being added. It is uncertain how many individuals that are currently on Medicaid will remain on Medicaid and begin working in turn reducing the reliance. Senator Bair asked if the numbers are reflected in the budget submitted to the Joint Finance-Appropriations Committee (JFAC). **Mr. Leary** responded yes.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Werk moved to approve docket 16-0318-0602. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0305-0603

Relating to Eligibility for Aid to the Aged, Blind, and Disabled

Peggy Cook, Medicaid Eligibility Program Manager, Division of Welfare, discussed the rules which implement the "Workers with Disabilities" program, intended to help individuals with disabilities receive Medicaid while working. These rules set the eligibility criteria. Effective this month a disabled person age 16 to 64 can work and maintain Medicaid coverage, and some will be asked to share in the cost. Those with a total monthly income under 133% of the federal poverty level (\$1,086.00) will pay no premium. The monthly premium for a person with income under 250% of the poverty level (\$2,042.00) is \$10.00. For those with a higher income the premium would be adjusted based on their earnings. **Vice Chairman Broadsword** asked if there was a provision where the Department of Health and Welfare could pay for insurance to cover an individual, an insurance aside from Medicaid. **Ms. Cook** commented that she believes that may be another program. **Senator Werk** requested clarification regarding nonfinancial requirements, specifically addressing child support. **Ms. Cook** elaborated that payment of child support is a criteria that must be met.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved for adoption of docket 16-0305-0603. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:22 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 25, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: Senator Coiner

CONVENED: Chairman Lodge called the meeting to order at 3:06 p.m.

GUESTS: See an attached sign-in sheet.

MINUTES: **Senator Bair** moved to approve the minutes dated January 16, 2007. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

RULES

16-0612-0602 Relating to the Rules Governing the Idaho Child Care Program (ICCP), Rewrite

This rule was heard by the Senate Health and Welfare Committee on January 18. At that time it was voted that the rule be held until January 25 for further consideration.

Genie Sue Weppner, Program Manager, Department of Welfare, reported on the meeting held with representatives of the higher education community and representatives of the Department of Health and Welfare regarding the proposed Idaho Child Care Program rule changes. The meeting held was requested by the Senate Health and Welfare Committee. A group of ten individuals from Boise State University and the department met on Tuesday, January 23. The meeting was positive and provided an opportunity to reach a more thorough understanding of higher education's concerns about the proposed child care rules and an opportunity for the department to provide more information regarding the reasons for proposing the rule changes. A chart was created titled, "Comparison of Benefits Available to Similar Working Families and Student Families." The chart shows a comparison of the benefits available to working families and to non-working student families receiving the same income. The key difference between working families and the non-working student families is how their income is considered. Working family earned income is counted which reduces the benefit they may receive. Non-working student income in the form of grants, student loans,

scholarships, and work study are not counted which allows them to earn the maximum benefit available. Non-working student families, across the board, are eligible to receive up to 110 % more in benefits than working families. The purpose of the meeting was to identify additional funding to subsidize child care for the students affected by the rule change. The group concluded they were not able to identify additional funds but did agree to work on two things, (1) collaborate during the implementation of any rule change that would affect students in hopes of achieving any needed savings in turn reducing negative impacts on students, and (2) continue working together to find a way to maximize funding for students needing child care while continuing to meet the needs of low income working families as the department will continue to be faced with the need to increase poverty levels in the future. Without additional state or federal funding, considerations will need to include cutting services in order to fund the poverty rate increase. **Vice Chairman Broadsword** commented that Chairman Lodge had attended the meeting and asked for her thoughts regarding a solution. **Chairman Lodge** explained she would like to see the Department of Health and Welfare work alongside colleges/universities, as well as any advocacy groups representing the working poor, toward a temporary rule that would (1) raise the poverty level so that more individuals are eligible overall, (2) increase provider payments to an amount that is cost-neutral, (3) place the work rule in effect, (4) ensure that the working poor are not impacted, and (5) reword the 24-month language to mean 24 months of schooling with ICCP assistance versus 24 months of consecutive school attendance. **Vice Chairman Broadsword** asked the committee to consider the reason the working poor are not able to attend these discussions, i.e., because they are working and do not have the luxury of attending. **Vice Chairman Broadsword** asked if the rule should be accepted and the department redirected to write the changes as a temporary rule, or, if the rule should be rejected altogether and the changes be proposed as a temporary rule, taking effect after the session. **Ms. Weppner** suggested the department has the freedom as to how the implementation of the proposed rule change is structured. There are many opportunities available to describe the method in which the rule may be applied or services provided, benefitting both the students as well as the working family. **Vice Chairman Broadsword** wanted to know if the rule were adopted as written, would the department be willing to offer their assurance that all interests could be represented during the implementation of the rule. **Ms. Weppner** explained it is important to note regardless of what happens with the change in the rule, it has to result in enough of a savings to fund the increase in the poverty rate. While there is a desire to do as much for students as possible, more than half of the population consuming child care right now are low income working families and they desperately need the assistance. **Vice Chairman Broadsword** asked if 86 percent of those receiving ICCP assistance are working families. **Ms. Weppner** confirmed yes. **Chairman Lodge** inquired if groups representing the working poor would be present in decision making in addition to the college and university parties. **Ms. Weppner** responded yes. **Senator Kelly** asked for clarification on the direction to adopt the rule with no additional funding in the program, leaving the needs of all parties to be

met. **Vice Chairman Broadsword** answered it is felt there is enough flexibility within the rules implementation process to work toward cost-neutrality, specifically, altering the language of 24 months to mean 24 months of education, not necessarily two years of simultaneous education. **Ms. Weppner** said that there are rules and then there are procedure clauses. For example, a retooling of the language might actually mean 24 months and not two years - a year could mean two semesters of school or eight months of the year could be considered an eligible activity, and similar. Nonetheless, enough of a cost savings has to be created to fund the increase in the poverty rate. The meeting held yielded no immediate funding sources, however, it was thought that resources could be identified within higher education over time. There is only a flat amount of money available in the ICCP program. **Senator Kelly** asked if current students would be affected if the rule was adopted. **Vice Chairman Broadsword** asked when the 24-month period begins if the rule is adopted. **Ms. Weppner** responded that there are students who would be affected. If the poverty rate took effect in July, there would be an increase in cost. In order to remain cost-neutral by the end of the year a cost-decreasing activity would need to be rolled out as soon as possible. **Senator Kelly** asked about the involvement of higher education stakeholders during the rulemaking process. **Ms. Weppner** explained that while higher education was thought to have been well represented during the process it was discovered they were not. **Chairman Lodge** thanked higher education for their involvement moving forward. **Senator McGee** asked if a letter was in order, formalizing the commitment between the Department of Health and Welfare and the higher education representatives. **Vice Chairman Broadsword** commented it is felt a verbal agreement (as presented to the committee) should suffice. **Senator Hammond** recognized that the Department of Health and Welfare is doing its best to maximize resources and benefit as many people as possible.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION

Senator Hammond moved to adopt docket 16-0612-0602. The motion was seconded by **Chairman Lodge**. Further discussion was granted to **Senator Werk**, who requested an improved rulemaking process in the future from the Department of Health and Welfare, ensuring that all relevant stakeholders are present before/during the rulemaking process. Further discussion was granted to **Chairman Lodge**, who commended the Department of Health and Welfare for adding a negotiable component and "stepping up," despite the lack of higher education representatives before the rulemaking began. Further discussion was granted to **Vice Chairman Broadsword**, who reinforced that ICCP assistance was designed for the working poor, whether they are in school or not. The motion carried by **voice vote**.

16-0612-0601

Relating to the Rules Governing the Idaho Child Care Program (ICCP), Repeal

This rule was heard by the Senate Health and Welfare Committee on January 18. At that time it was voted that the rule be held until January

25 for further consideration.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

MOTION **Senator Hammond** moved to adopt docket 16-0612-0601. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

24-0301-0601 Relating to the Rules of the State Board of Chiropractic Physicians

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, explained the proposed rule updates the version of reference guidelines for peer review standards.

MOTION **Senator Bair** moved to adopt docket 24-0301-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

24-0501-0601 Relating to the Rules of the Board of Drinking Water and Wastewater Professionals

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, explained the proposed rule requires applicants to take and pass the examination within one year in an effort to keep applications current.

MOTION **Senator Hammond** moved to adopt docket 24-0501-0601. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

24-0901-0601 Relating to the Rules of the Board of Examiners of Nursing Home Administrators

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, commented that the proposed rule means to change rule 300 to allow for masters level education to be considered in the experience portion of the rule pertaining to endorsement.

MOTION **Senator McGee** moved to adopt docket 24-0901-0601. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

24-1001-0601 Relating to the Rules of the State Board of Optometry

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, summarized the proposed rule as revising examination requirements and length of work experience required for endorsement, revising continuing education to include observation and the use of excess hours, updating the code of ethics, and revising the contents of prescriptions.

MOTION **Senator Darrington** moved to adopt docket 24-1001-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

24-1401-0601 Relating to the Rules of the State Board of Social Work Examiners

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, explained the proposed rulemaking clarifies required credentials to be filed, allows for termination of inactive files after 24 months of no contact, and deletes sections pertaining to Clinical Practice Exemption and Independent Practice as deadline is in the past. **Senator Darrington** asked for assurance that exclusivity was not taking place within the rulemaking process. **Mr. Hales** responded that it was not. **Vice Chairman Broadsword** asked Mr. Hale if he knew of anyone opposed to the rule. **Mr. Hales** responded he did not.

MOTION

Senator McGee moved to adopt docket 24-1401-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

24-1501-0601

Relating to the Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, pointed out that the proposed rulemaking updates incorporation by reference pertaining to ethics, revises counselor supervisor requirements, clarifies supervision for marriage and family therapists, and adds national credential registry for endorsement qualifications.

MOTION

Senator Hammond moved to approve docket 24-1501-0601. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

24-1701-0601

Relating to the Rules of the Idaho State Board of Acupuncture

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, informed the committee the proposed change updates contact information for the board and reduces original license fees and annual renewal fees from \$250 to \$200 per license. **Senator Darrington** commented that the fee increase/decrease approvals work much better under rulemaking processes than by statute.

MOTION

Senator Bair moved to approve docket 24-1701-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

24-1201-0601

Relating to the Rules of the Idaho State Board of Psychologist Examiners, Fee Rule

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, explained that the pending rule updates contact information, increases the fee for renewal of licenses and service extender applications, removes fee references from the service extender section and places them in the fee section, and corrects a typographical error. **Senator Bair** asked for clarification regarding the drastic spike in costs. **Mr. Hales** explained this was due to a steady increase in investigative costs in response to complaints.

MOTION

Senator Hammond moved to approve docket 24-1201-0601. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

24-1301-0601

Relating to the Rules of the Physical Therapy Licensure Board, Fee Rule

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, stated that the temporary rules are being proposed to provide contact information, definitions, define supervision, provide an application and fees, set a standard for continuing education, define disciplinary penalties, and provide a code of ethics. The Board of Physical Therapy was moved from the Board of Medical Examiners (advisory board) to the Idaho Bureau of Occupational Licenses (self-governing board). **Vice Chairman Broadsword** asked if there was any language in the rule limiting whether or not a physical therapist could operate within a physician's office. **Mr. Hales** responded there was not. Mr. Hales stated The Idaho Occupational Therapy Association (IOTA) did stand with concerns when he presented to the Health and Welfare Committee in the House of Representatives; it was pledged that the board would work with IOTA regarding minor definition changes if the rule was adopted.

MOTION

Senator Darrington moved to approve docket 24-1301-0601. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

24-1501-0602

Relating to the Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists, Fee Rule

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, explained the rule would increase the fee for renewal of licenses for Counselors and Marriage and Family Therapists from \$60 to \$100. **Senator Darrington** asked for clarification whether or not the legislature had done away with the counselor portion of the rule. **Mr. Hales** explained that three years ago, qualifications were established for a pastoral counselor to be licensed; after a great deal of work there was found to be only one in the state so the section was deleted.

MOTION

Senator Hammond moved to approve docket 24-1501-0602. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

24-1901-0601

Relating to the Rules of the Board of Examiners of Residential Care Facility Administrators

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, explained the proposed rulemaking adds a scope of practice and increases fees for license application and provisional/temporary permits. The Scope of Practice (Rule 450) within this rule was rejected in the House of Representatives subcommittee; it was felt that administrators deal with unique populations, therefore, an administrator needs to be educationally-trained to be able to best serve their population. **Senator Darrington** stated he felt the language was general in nature and was unsure of what the objection would be. **Senator Hammond** asked if it is standard to license an administrator and then ask them to manage their own education and related efforts. **Mr. Hales** explained that the board recognizes certain standards/qualifications must be met in order to obtain a basic license, however, beyond the license are

unique populations with specific needs, i.e., it is felt that if an administrator takes on varying populations, they are asked to practice within their confidence first and foremost. **Senator Hammond** asks who governs beyond licensure. **Mr. Hales** explained the Department of Health and Welfare regulates the facility while the Board of Residential Care Administrators regulates the administrator. **Vice Chairman Broadword** asked whose role it is to ensure that professionals with the specialized experience are hired. **Mr. Hales** commented that ultimately the administrator is responsible for the facility.

Kris Ellis, Executive Director, Idaho Assisted Living Association (IDALA), stood in support of the rule change.

MOTION **Senator Hammond** moved to approve docket 24-1901-0601. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:18 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jennifer Andrews
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 29, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:04 p.m.

GUESTS: See an attached sign-in sheet.

MINUTES: **Vice Chairman Broadsword** moved to approve the minutes dated January 17, 2007. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Rules

24-1301-0701 Relating to Rules of the Physical Therapy Licensure Board

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses, explained the rulemaking is meant to designate the examinations approved by the board and to establish the passing scores of those examinations and include the examination as a requirement for licensure. Idaho Code, Title 54, Chapter 22, was amended and signed into law in 2006, bringing this board under the Bureau of Occupational Licenses. These rules were not included in the previous rule promulgation. **Senator Darrington** inquired about going through the National Physical Therapy Examination (NPTE), inserted back into the rule, and if that takes care of reciprocity between the states. **Mr. Hales** responded yes.

Motion **Senator McGee** moved to accept docket 24-1301-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

24-1701-0601 Relating to the Rules of the Idaho State Board of Acupuncture, Pending Fee Rule

Roger Hales, Attorney, Representing the Idaho Bureau of Occupational Licenses asked for adoption of the pending rules. The complete text of the proposed rule was published in the October 4, 2006, Administrative Bulletin, volume six through ten, pages 413 and 414.

Motion **Senator Coiner** moved to approve docket 24-1701-0601. The motion

was seconded by **Senator Werk**. The motion carried by **voice vote**.

Routing Slip

RS16542C1 Relating to Solemnization of Marriage

James Aydelotte, Bureau Chief of the Bureau of Health Policy and Vital Statistics, Department of Health, explained the legislation clarifies the list of persons qualified under Idaho code to solemnize marriages. **Senator Darrington** asked who this would include and asked for clarification regarding the Governor and the Lieutenant Governor's role. **Mr. Aydelotte** explained that the rule does not expand to include any one person who can perform marriage, it is merely clarification of the language explaining who can; the Governor and Lieutenant Governor are included as they are considered the chief judicial officer of their jurisdiction.

Motion **Senator Darrington** moved to introduce RS16542C1 for printing. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

RS16540 Relating to Vital Statistics

James Aydelotte, Bureau Chief of the Bureau of Health Policy and Vital Statistics, Department of Health, suggested the legislation would authorize advanced practice professional nurses and physician assistants to sign death and stillbirth certificates and authorize final disposition or removal of dead bodies and stillborn fetuses. **Vice Chairman Broadsword** asked how the rule came about. **Mr. Aydelotte** explained it was important to align the vital statistics act with prior legislation allowing advanced practice professional nurses to perform without the supervision of a physician.

Motion **Senator McGee** moved to print RS16540. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

RS16550C1 Relating to Vital Statistics

James Aydelotte, Bureau Chief of the Bureau of Health Policy and Vital Statistics, Department of Health, stated there are changes to definitions because they have become outdated or the scope of the professional practice has changed. **Vice Chairman Broadsword** asked for background on this legislation. **Mr. Aydelotte** explained that some of the definitions were in need of rewording and changes are also associated with RS16540, to include language relating to advanced practice professional nurses.

Motion **Senator Hammond** moved to print RS16550C1. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Rules

22-0104-0601 Relating to the Rules of the Board of Medicine for Registration of

Supervising and Directing Physicians, Fee Rule

Nancy Kerr, Executive Director, Idaho Board of Medicine, stated the pending rules are the result requests by licensees, nurses, and business interests for the board to review/revise its current policy related to laser procedures. Licensees were concerned with the increasing number of unlicensed personnel offering laser services/prescriptive cosmetic services and the inability to delegate non-ablative laser treatments under current interpretation of the law. The board met with the concerned individuals on two occasions to discuss and brainstorm options to address the public safety issues. The majority supported the amendment to the rules. The pending rule (1) creates a framework for the training and supervision of personnel providing laser treatment or services to patients in Idaho and (2) provides for accountability of the physician responsible for the laser device or prescriptive cosmetic treatment to train personnel and supervise services and to provide alternate supervision to medical personnel when not available, as well as (3) provides for responsible and reasonable limits on the number of personnel supervised to ensure adequate supervision with a provision for a waiver to consider unusual circumstances, and finally (4) a general housekeeping effort, corrections and clarification in terminology are added. **Vice Chairman Broadsword** asked what prompted the action for laser rules requiring physician oversight, and if it may have been associated with recent problems in mall settings. **Ms. Kerr** responded that the rule is a result of several complaints that had been received from spas and related businesses, as well as those in mall settings. **Vice Chairman Broadsword** asked if that included botox injections and similar procedures. **Ms. Kerr** commented that the rule asks physicians to oversee the procedures and related training. **Vice Chairman Broadsword** asked for clarification on advanced practice professional nurses and procedures they are able to provide. **Ms. Kerr** stated that while she cannot speak for the advanced nursing associates, she believes they practice nursing and not medicine and lasers fall under devices used in medicine. **Senator Werk** inquired about those currently performing "medical" procedures who are not physicians nor have they been trained by physicians. **Ms. Kerr** stated there are non-medical personnel performing prescriptive cosmetic procedures and/or are not licensed. **Senator Werk** inquired about potential violation of law of said procedures being performed. **Ms. Kerr** responded that it is a non-licensed practice referred to a prosecutor. **Senator Werk** asked if the Idaho Board of Medicine would have authority if the rule was passed. **Ms. Kerr** responded yes, as the Federal Drug Administration (FDA) requires physicians to oversee the purchase of equipment and related items, and the Idaho Board of Medicine oversees the physicians.

Motion

Senator Werk moved to approve docket 22-0104-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

22-0105-0601

Relating to the Rules Governing Licensure of Physical Therapists and Physical Therapy Assistants, Chapter Repeal, Temporary and Proposed Rule

Nancy Kerr, Executive Director, Idaho Board of Medicine, stated this docket is a temporary and proposed rule of the Board of Medicine to repeal in its entirety the Rules Governing the Licensure of Physical Therapists and Physical Therapy Assistants. The rules are repealed to comply with 2006 amendments to Title 54 Chapter 22 Idaho Code. The 2006 House Bill 619 transferred rule making authority to the Department of Self Regulating Agencies, Bureau of Occupational Licenses, Board of Physical Therapy.

Motion **Senator Coiner** moved to approve docket 22-0105-0601. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

22-0106-0601 Relating to the Rules for EMS Personnel, Chapter Repeal, Temporary and Proposed Rule

Nancy Kerr, Executive Director, Idaho Board of Medicine, explained the docket is a temporary and proposed rule of the Board of Medicine to repeal in its entirety the Rules for EMS Personnel. The rules are repealed to comply with 2006 amendments to Title 54 Chapter 22 Idaho Code. The 2006 Senate Bill 1342 transferred rule making authority to the to Department of Health Welfare, Emergency Medical Services Physician Commission.

Motion **Senator Hammond** moved to approve docket 22-0106-0601. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

19-0101-0601 Relating to the Rules of the Idaho State Board of Dentistry

Mike Sheeley, Executive Director, Idaho State Board of Dentistry, explained the purpose of the proposed rulemaking is to provide needed rule revisions to implement legislation enacted during the 2006 Legislative session which authorized the Board of Dentistry to conduct its licensing activities on a biennial basis, as opposed to the previously existing annual licensing system. Biennial licensing allowed the Board of Dentistry to stagger the renewal of dental and dental hygiene licenses over a two-year period so that only one category of professional license would be renewed in each calendar year. The proposed rulemaking will implement the biennial licensing legislation by revising rules to effectuate a biennial licensing system and by deleting all references in the rules to annual or yearly licensing. The staggered, biennial renewal of licenses created efficiencies by reducing the staff time and costs associated with license renewals. Other medical boards in Idaho renew professional licenses on a multiple year basis. The Board of Dentistry currently licenses approximately 2800 dentists and dental hygienists. **Senator Darrington** asked if the proposed rule was revenue-neutral. **Mr. Sheeley** confirmed the rule is thought to be clerical/housekeeping.

Motion **Senator McGee** moved to approve docket 19-0101-0601. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

19-0101-0602

Relating to the Rules of the Idaho State Board of Dentistry

Mike Sheeley, Executive Director, Idaho State Board of Dentistry, explained that as of August 1, 2006, the Idaho Board of Dentistry relocated to a new office space. The Administrative Rules of the Idaho Board of Dentistry must contain pertinent office information, including the Board of Dentistry's physical address. As such, Rule 5 of the Board of Dentistry's current administrative rules must be amended to remove the outdated office address and to include the Board of Dentistry's new office address.

Motion

Senator Hammond moved to approve docket 19-0101-0602. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

19-0101-0603

Relating to the Rules of the Idaho State Board of Dentistry

Mike Sheeley, Executive Director, Idaho State Board of Dentistry, stated during the 2005 Idaho legislative session, statutes and rules were approved to authorize qualified dental hygienists to perform dental hygiene functions in extended access oral health care programs (typically, public and charitable dental programs). The Board of Dentistry now proposes to create a new extended access dental hygiene restorative license endorsement. The Board of Dentistry believes that persons treated in extended access oral health care programs would greatly benefit from efficiencies created by allowing qualified dental hygienists practicing under the direct supervision of a dentist to provide certain restorative treatment (placing fillings in a prepared tooth and carving, adjusting and contouring the fillings). At present, dental hygienists are not authorized to perform restorative treatment on a patient in any setting. In effect, a dentist could treat a greater number of patients in an extended access oral health care program if a dental hygienist could provide the specified restorative treatment (which now must be done by the dentist). To qualify for the restorative endorsement, an active status dental hygienist must successfully complete a specified clinical examination or hold an equivalent permit in another state. **Senator Kelly** inquired about potential differing standards of care for paying clients versus non-paying. **Mr. Sheeley** responded that because a program is designated as an "extended access" program does not mean that it is provided at no charge; restoration by a dental hygienist will only occur in a public setting by a qualified hygienist under direct supervision of a dentist. **Vice Chairman Broadsword** asked if this would be a liability issue for the dentist. **Mr. Sheeley** commented that every dentist is responsible for their employees. **Senator Werk** inquired about how statutory authority creates an endorsement. **Mr. Sheeley** explained the enabling statute allows the Board of Dentistry to license hygienists, define their scope of practice, and enforce those rules.

Jerry Davis, Executive Director, Idaho State Dental Association, stood in support of the rule.

Motion

Senator Werk moved to approve docket 19-0101-0603. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

19-0101-0604

Relating to the Rules of the Idaho State Board of Dentistry

Mike Sheeley, Executive Director, Idaho State Board of Dentistry, reminded the committee that Rule 40, Administrative Rules of the Board of Dentistry, identified behavior that constitutes unprofessional conduct on the part of a dentist or dental hygienist. The Board of Dentistry proposes to amend existing Rule 40 to clarify the fact that the list of unprofessional conduct specified in the rule is not inclusive and that unprofessional conduct also includes the failure to comply with or violation of any laws pertaining to or affecting a person's fitness to practice dentistry. For example, many criminal laws do not govern the practice of dentistry, but a conviction for criminal conduct may pertain to or affect a person's fitness to practice dentistry.

Motion

Senator Bair moved to approve docket 19-0101-0604. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0305-0701

Relating to the Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

This rule was heard by the Senate Health and Welfare Committee on January 17, 2007. At that time it was voted that the rule be held until January 29 for further consideration.

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, and Attorney **Bob Aldridge**, Chairman, Trust and Estate Professionals of Idaho, presented the findings from special meetings facilitated to discuss the docket, held at the request of the Senate Health and Welfare Committee. Two meetings were held and the following attended: Senator Broadsword (first meeting), Idaho Department of Health and Welfare (DHW), Trust and Estate Professionals of Idaho (TEPI), National Association of Insurance and Financial Advisors (NAIFA) (first meeting), American Association of Retired Persons (AARP), Idaho Health Care Association (IHCA) (second meeting), Department of Insurance (second meeting).

Continued work required includes (1) 16.03.05.276 - DHW working with their federal partners to determine what real estate contracts can be excluded under the Federal Law and update the rules to clarify this. In the mean time, guidance will be added to the handbook so that eligibility staff members can clearly identify how to count a real estate contract. Changes to this rule would not meet the standard for a temporary rule at Idaho Code § 67-5226. The Department will follow guidelines to initiate formal negotiated rule making as soon as the legislative session ends; (2) 16.03.05.841.11 - At the request of IHCA and TEPI, DHW will research the additional cost and processes associated with allowing 30-day bed holds for Medicaid applicants who are requesting the hardship waiver. This is an option allowed under the Deficit Reduction Act (DRA), but DHW has chosen not to use the option at this time. TEPI argued that the regulation's language is over-restrictive compared to the DRA. DHW also agreed, at the request of IHCA, to discussing an amendment of the State Plan after the legislative session to make certain clarification of terminology regarding "bed holds" included. The clarification regarding "bed holds" is only required if the Department elects to pay for the "bed

holds;" (3) 16.03.05.841.12 & .13 - DHW and TEPI will continue discussions around the changes to these rules and if there is a better way to obtain the desired result; (4) 16.03.05.837 - The term "Life Estate Remainder" will be corrected in a new docket opened after the legislative session; (5) 16.03.05.872.02.e - DHW will continue to work with TEPI and IHCA to identify alternatives on how to assist individuals requiring long-term care, but have income in excess of the Medicaid income limit. The current concerns with this rule are clarified in handbook guidance.

Unresolved issues (agree to disagree) include (1) 16.03.05.838 - DHW and TEPI are at an impasse on these annuity rules. IHCA did not have a stand on the issue. Two versions of modifications to Section 56-214(4) were reviewed. TEPI agreed to support the version proposed by DHW, and will carry that language through the legislature, for the purpose of proceeding to further discussions, but believes that additional modifications to the rules and to the statute may be required to comply with the DRA. TEPI also believes that those modifications are necessary to avoid divorce becoming a common Medicaid planning tool; (2) 16.03.05.841.04 - DHW and TEPI are at an impasse on the change to this rule. IHCA supports DHW in this change.

Resolved issues include (1) 16.03.05.285, .288, .833, .835 - The process of the phased-in 5 year look-back period is already in the AABD Handbook as guidance for the rules. DHW will remind eligibility staff that the full 5 year look-back period for gifts will not be in effect until 2-8-2011. The Department will evaluate if there is a better way to ask the question on the application; (2) 16.03.05.744 – Existing rule 16.03.05.727 meets the requirements that TEPI described (increasing the community spouse allowance) when read in combination with rules 16.03.05.745-748.; (3) 16.03.05.834 – All agree with this change. It matches the DRA; (4) 16.03.05.745 – DHW argued that the rule should have a simple interest rate as it is now. If it is tied to a certain index, it will make using the rule complicated for eligibility staff, which will in turn slow the eligibility determination. DHW is willing to discuss other options that are brought to them. TEPI does not support a fixed interest rate because of the inherent fluctuations of interest rates. TEPI argued for a reference to an index, such as 62 USC 7520 Internal Revenue Service (IRS) rates (suggested by Eric Peterson), which are routinely published and easily obtained.

Ms. Cummins explained the parties have agreed to move forward under the negotiated rulemaking process. The process will be initiated after the legislative session ends and any interested parties will be welcome. **Chairman Lodge** asked if Ms. Cummins was in agreement with the two pieces of legislation, including the emergency clause. **Ms. Cummins** responded yes. **Senator Kelly** asked for clarification if the document, prepared as a result of the meetings, was going to be entered into the record of minutes. **Mr. Aldridge** explained the document was presented in hopes of being an attachment to the minutes for additional explanation or reference only, i.e., the committee was not being asked to vote on the document per se. **Senator Bair** posed to the committee how to move forward regarding the acceptance of a docket perceived to not be agreed

on by all parties. **Senator Darrington** responded by explaining that since all parties have arranged to revise the docket to reflect their many agreements, the committee can approve the docket, leaving behind a legal record, with the assurance that the committee will review a revised docket in the future.

Motion

Senator Hammond, recognizing the testimony received is a matter of record rather than a document the committee is agreeing upon, moved to approve docket 16-0305-0701. The motion was seconded by **Senator Kelly**. Further discussion was granted to **Vice Chairman Broadword** who stated the agreement between the parties is that they will continue to work toward resolution regarding this docket. The motion carried by **voice vote**.

16-0305-0602

Relating to the Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

This rule was heard by the Senate Health and Welfare Committee on January 17, 2007. At that time it was voted that the rule be held until January 29 for further consideration.

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, and Attorney **Bob Aldridge**, Chairman, Trust and Estate Professionals of Idaho, presented the findings from special meetings facilitated to discuss the docket, held at the request of the Senate Health and Welfare Committee. Two meetings were held and the following attended: Senator Broadword (first meeting), Idaho Department of Health and Welfare (DHW), Trust and Estate Professionals of Idaho (TEPI), National Association of Insurance and Financial Advisors (NAIFA) (first meeting), American Association of Retired Persons (AARP), Idaho Health Care Association (IHCA) (second meeting), Department of Insurance (second meeting).

Unresolved issues (agree to disagree) include (1) 16.03.05.005.04 & 16.03.05.280 – TEPI & the Department agreed to disagree, but they will work together to improve the statute and regulations. TEPI is especially concerned that the portions of .280 treating the failure to make probate espousal elections (homestead, exempt property, living allowance) as a transfer subject to penalty will encourage divorce as a Medicaid planning tool and will force TEPI to examine removal of, or major modifications to, the probate code in this area; (2) 16.03.05.005.03 – DHW and TEPI are at an impasse on these annuity rules. IHCA did not have a stand on the issue. See above on .838.

Partially resolved issues include (1) 16.03.05.737.03 & 16.03.05.871 – All agree with the changes in these rules in the first paragraph. TEPI and DHW agreed to disagree regarding .871.01.d. Certain clarifications will be made in the handbook by DHW.

Ms. Cummins explained the parties have agreed to move forward under the negotiated rulemaking process. The process will be initiated after the legislative session ends and any interested parties will be welcome.

Motion

Senator Hammond moved to approve docket 16-0305-0602. The motion was seconded by **Senator McGee**. Further discussion was granted to **Vice Chairman Broadsword** who stated the agreement between the parties is that they will continue to work toward resolution regarding this docket. The motion carried by **voice vote**.

16-0305-0605

Relating to the Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

This rule was heard by the Senate Health and Welfare Committee on January 17, 2007. At that time it was voted that the rule be held until January 29 for further consideration.

Susie Cummins, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, and Attorney **Bob Aldridge**, Chairman, Trust and Estate Professionals of Idaho, presented the findings from special meetings facilitated to discuss the docket, held at the request of the Senate Health and Welfare Committee. Two meetings were held and the following attended: Senator Broadsword (first meeting), Idaho Department of Health and Welfare (DHW), Trust and Estate Professionals of Idaho (TEPI), National Association of Insurance and Financial Advisors (NAIFA) (first meeting), American Association of Retired Persons (AARP), Idaho Health Care Association (IHCA) (second meeting), Department of Insurance (second meeting).

TEPI will introduce a bill to align wording in Idaho Statute 56-1303 with the Deficit Reduction Act (DRA) of 2005 by striking "Upon exhausting". If the Bill is passed in this Legislative Session, DHW will work to align the temporary rules in this docket with the new Idaho Statute. All meeting attendees agreed that the amount of resources excluded should be not less than the amount equal to what the Qualified Long-term Care Insurance policy has paid out for care and not the amount of the face value. However, members of TEPI argued that if the policy is locked in and is paying, but no longer requires payment by the policy holder, it would seem like there is a paid benefit for the face value amount determinable by actuarial means and that the person who spent money to protect assets would get that full benefit that they paid which benefits the state and that the state should not get the "windfall" from the early death (actuarially) of the policy holder who paid for the policy to the benefit of the state. In support, it was argued that if you want people to purchase such policies, it would seem like the person should get the full benefit of what they paid for. The state could be picking up a difference if the policy does not cover full payment. Therefore it was requested that this area needs a more comprehensive fiscal analysis than it has been given at this point as well as examination of what other states and Centers for Medicare and Medicaid Services (CMS) do in this area. The Department argues that the DRA is explicit that not more than the amount paid out can be allowed.

Ms. Cummins explained the parties have agreed to move forward under

the negotiated rulemaking process. The process will be initiated after the legislative session ends and any interested parties will be welcome.

Motion

Senator Hammond moved to approve docket 16-0305-0605. The motion was seconded by **Senator McGee**. Further discussion was granted to **Vice Chairman Broadsword** who stated the agreement between the parties is that they will continue to work toward resolution regarding this docket. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 3:53 p.m.

Senator Patti Anne Lodge
Chairman

Jennifer Andrews
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 30, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:02 p.m.

GUESTS: See an attached sign-in sheet.

Presentation Larry Callicutt
Idaho Department of Juvenile Corrections, "The Juvenile Justice System"

Larry Callicutt, Director, Idaho Department of Juvenile Corrections, offered a presentation highlighting the (1) Department's Mission Statement, (2) Idaho Juvenile Justice Service Delivery Areas, (3) Idaho Department of Juvenile Corrections Recidivism Rates, (4) State/County Partnership, (5) Juvenile Population and Juvenile Arrest Trends, (6) Juvenile Corrections Center - Lewiston Update, (7) Faith-Based Activities, (8) Family Counseling, (9) Subacute Mental Health Beds at the Juvenile Correction Center - Nampa, (10) Mental Health Community Incentive Project, and (11) Juvenile Justice Continuum of Care Active Partnerships.

Chairman Lodge asked how the parent reimbursement fund works. **Mr. Callicutt** explained that the program is voluntary; some parents are willing, and sometimes barely able, to contribute toward the child's stay while in custody. A staff person in the fiscal department contacts the parent(s) and discloses the cost to the state for housing the child and directly asks the parent to help defray the costs. **Chairman Lodge** inquired as to the tracking methods of children for the two years after they have been released. **Mr. Callicutt** stated he feels the database(s) are limited in scope, kids move out of state, and some enter the adult system, therefore, the offenders are hard to track. **Vice Chairman Broadsword** asked that the number of children versus percentages (as displayed in the presentation documents) be provided in the future, and also asked if the Idaho Transportation Department (ITD) database was being utilized. **Mr. Callicutt** responded he will look into the ITD database. **Senator Kelly** asked how it is determined a child be charged as an adult when a crime has been committed. **Mr. Callicutt** explained that through law enforcement training he interpreted a Latin term to mean for a child to be

charged as a juvenile or an adult; the child must be found to have the mental capacity to form intent of committing the crime, i.e., a juvenile must be found guilty of enumerated crime (any crime committed by a person previously adjudicated delinquent for/convicted of any of a number of listed offenses). **Chairman Lodge** voiced her concern for the importance of after-care programs. **Mr. Callicutt** concurred.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Rules

58-0105-0602

Relating to Rules and Standards for Hazardous Waste

Orville Green, Waste Management and Remediation Division Administrator, Department of Environmental Quality, explained the purpose of the rule describes adoption by reference of Federal Hazardous Waste Regulations, promulgated from July 1, 2005 through June 30, 2006. This is a routine, annual procedure that the Department of Environmental Quality (DEQ) performs to satisfy consistency and stringency requirements of the Idaho Hazardous Waste Management Act, (HWMA) Idaho Code, Section 39-4404. This action is also necessary to maintain primacy and authorization from the United States Environmental Protection Agency (U.S. EPA) for Idaho DEQ to operate the Federal Resource Conservation and Recovery Act (RCRA) Hazardous Waste Program in lieu of the U.S. EPA in Idaho. Assumption of primacy over hazardous waste control from the federal government is also required by HWMA, Idaho Code, Section 39-4404. There will be no increased costs for the regulated community because this is an update to provide consistency with federal hazardous waste regulations which have been promulgated and would be in effect. There are no controversial issues believed to be associated with this rulemaking. **Senator Darrington** asked if RCRA is an act that requires a periodic examination by congress every few years. **Mr. Green** reported that it does have to be reviewed often, and has been; the act is a very prescriptive and detailed, lengthy act.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Werk moved to approve docket 58-0105-0602. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

58-0108-0601

Relating to Idaho Rules for Public Drinking Water Systems, Point of Use Treatment Devices

Barry Burnell, Water Quality Programs Administrator, Idaho Department of Environmental Quality, explained the rulemaking as (1) providing Public Water System's (PWSs) flexibility to use Point-Of-Use (POU) for treating some contaminants (arsenic), (2) exempting systems with less than 200 service connections from submitting Plan and Specification (P&S), (3) allowing for waivers from P&S submittals for larger systems, (4) providing PWSs with certainty and clarity regarding what information they must

submit to DEQ to demonstrate how their ownership, operation and maintenance of the POU devices will ensure compliance with the maximum contaminant level (MCL).

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Bair moved to adopt docket 58-0108-0601. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

58-0108-0602

Relating to Idaho Rules for Public Drinking Water Systems, Phase II Development of Facility and Design Standards For Public Drinking Water Systems

Barry Burnell, Water Quality Programs Administrator, Idaho Department of Environmental Quality, suggested the rulemaking (1) Transcribes those portions of the Recommended Standards for Waterworks that were not addressed in the Phase I rulemaking into Idaho rule, as advised by the appointed committee of licensed professional engineers. The rule is comprehensive and covers a large amount of material related to treatment, pumping facilities, storage requirements, redundancy and reliability, and handling of treatment waste residuals. The recommendations provided by the advisory committee were further refined during the public negotiation process; and (2) Provides definitions as necessary to standardize the approach to design flows, fire flows, and storage. Although fire flow is regulated by local fire authorities and not by DEQ, the rules must address fire flow to the extent necessary to ensure that fire flow capabilities are consistent with the provision of safe and reliable domestic flows. The process of moving Recommended Standards for Water Works (10 state standards) provisions into Idaho rule revealed differing interpretations among the Department of Environmental Quality and private consulting engineers. An important achievement of this rulemaking will be to narrow the range of interpretations and provide greater consistency around the state. **Vice Chairman Broadsword** asked if the cities are satisfied with the results of the negotiated rulemaking. **Mr. Burnell** confirmed yes.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Coiner moved to approve docket 58-0108-0602. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

58-0116-0502

Relating to Wastewater Rules, Phase II Development of Facility and Design Standards For Wastewater Systems

Barry Burnell, Water Quality Programs Administrator, Idaho Department of Environmental Quality, stated this rulemaking was necessary to respond in part to the mandate of Senate Bill 1220 which required the Department of Environmental Quality (DEQ) to work with an engineering committee and stakeholders to develop facility and design standards. Senate Bill 1220 also rewrote Idaho Code 39-118 which necessitated modifying DEQ rules on plan and specification review for drinking water,

wastewater and other waste systems. This is the second phase of that response. In Phase 1, DEQ created facility and design standards for gravity sewers and took the opportunity to separate wastewater rules from water quality standards. Prior to this they were combined under IDAPA 58.01.02 – Water Quality Standards and Wastewater Treatment Requirements. They are now separated into 58.01.16 for the Wastewater Rules and 58.01.02 for the Water Quality Standards. Representatives from Idaho cities, consulting groups, Idaho Association of Commerce and Industry, Idaho Mining Association, Idaho National Laboratory, wastewater operators, Idaho Rural Water, and DEQ were all involved in one or more parts of developing or commenting on this rule. DEQ received several very good public comments and made several modifications based on those comments. The professional engineering community is questioning whether seepage testing of lagoons also falls under the authority for licensed professional geologists. Currently the rule allows for both a professional engineer and geologist to conduct seepage tests. To resolve this question of authority DEQ commits to meeting with the Professional Engineer Board, American Council of Engineering Companies (ACEC) of Idaho, and Professional Geologists Board to determine if lagoon seepage testing falls under the standards of practice for professional geologists. The federal government does not regulate the items in these rules. **Senator Hammond** asked if this rule adds any additional costs to the design/construction of wastewater systems. **Mr. Burnell** stated this rule adopts longstanding guidance used by the DEQ and an additional policy regarding lagoons and seepage testing that has been around for years - elements the design community and city/sewer districts are familiar with and have been using for years as well.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Hammond, understanding these rules are basically the guidance of cities, wastewater entities, et al., moved to adopt [58-0116-0502](#). The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

58-0101-0303

Relating to Rules for the Control of Air Pollution In Idaho, Fee Rule

Martin Bauer, Administrator, Air Quality Program, Idaho Department of Environmental Quality, stated there are three legs to the Title V fee registration rules. A fee is assessed on a fixed annual fee based on size. This fee was raised 30%. The second leg is a fee based on a per-ton emission fee which is capped to not exceed certain levels. This fee cap was raised 30%. Finally, there is a fee for service based on the amount of Title V work performed on a specific facility. This fee also is capped not to exceed certain levels. The cap was raised from \$7,500 to \$20,000. An addition the original fee rule included a short fall provision with a sunset clause. This portion of the rule is being deleted since it is no longer active. The rule will now bring in approximately two million dollars. The DEQ will be watching program costs and fee assessments to ensure enough fees are being collected and spent appropriately. **Senator Bair** asked for clarification on the percent of emissions per year and the businesses who are affected by the rule. **Mr. Bauer** explained the rule

applies to larger facilities in Idaho, otherwise known as Title 5 companies. A Title 5 designation means that the company produces 100 tons per year of emissions. Examples include JR Simplot Company, Amalgamated Sugar, Monsanto, Potlatch, and Micron.

Roy Eiguren, Attorney representing Amalgamated Sugar Company LLC, stood in support of the rule.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Bair moved to adopt docket 58-0101-0303. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

58-0101-0502

Relating to Rules for the Control of Air Pollution In Idaho

Martin Bauer, Administrator, Air Quality Program, Idaho Department of Environmental Quality, detailed the reasons for the proposed rulemaking as part of settlement of a lawsuit. Experts employed by the Department of Environmental Quality (DEQ), Idaho Conservation League (ICL) and the Idaho Dairymen Association, agreed on the amount of dairy cows needed to trigger ammonia emissions of one hundred ton per year. Ammonia is the air contaminant emitted in the largest quantity from a dairy. The rule addresses only the control of ammonia emissions, utilizing best management practices (BMP's) from dairies. This rule does not address odor or any other air contaminant. As a result of implementing some of the BMP's, however, there will likely be a co-benefit for the control of other air contaminants. Through research and expertise obtained by and from DEQ, Idaho State Department of Agriculture (ISDA), and the University of Idaho, a list of the BMP's used nationwide was developed, and numerical values for the amount of control of ammonia were established for each BMP. An arbitrary value of 20 was assigned to the BMP with the greatest control of ammonia emissions and all other BMP's were scaled from that value. The University of Idaho has finalized a BMP definition and assumption document that outlines how the values were assigned. This document went through the University of Idaho peer review process and was published through University of Idaho. This rule requires all dairies of the sizes listed in the table (in section 761) to obtain a permit by rule, regardless of when they were constructed. This will cover new proposed dairies and existing dairies of the sizes listed in the table, as well as existing smaller dairies that become large enough to trigger the thresholds listed in section 761. There is an exemption, for up to one year, for a small dairy that triggers the size threshold solely because of an emergency. Dairies that are subject to this rule must employ BMP's sufficient to total at least 27 points to comply with this rule. This rule offers the flexibility to the dairyman of the type of BMP's used based on market, weather, location, or other unique conditions at each dairy. The table in section 764 outlines the BMP's, the amount of points associated with that BMP, and the method the inspector will use to determine compliance. Compliance/compliance assistance for this rule is being conducted by the ISDA through a Memorandum of Understanding (MOU) with DEQ. Ultimate enforcement authority will remain with DEQ.

This will allow ISDA to work with dairies to attain compliance, but if/when a dairy is recalcitrant in attaining compliance, the case will be referred to DEQ for enforcement. The participants in the negotiated rule making have agreed to revisit this rule each year for the following three years to review the effectiveness of the rule, any new technologies available, the numerical values of BMP's, new studies or science developed regarding emissions factors, and the total compliance value of the rule, and make appropriate changes as needed. **Senator Kelly** asked if the rule only applies to ammonia emissions, and, what other types of air pollutants are present. **Mr. Bauer** explained that while hydrogen sulfide, multiple organic compounds, and other particulate matter are emitted, ammonia triggers 100 tons per year. **Senator Kelly** asked why the other pollutants are not being regulated. **Mr. Bauer** stated that by controlling the ammonia they may experience a co-benefit since ammonia is emitted in the largest amount. **Senator Darrington** asked what size an area has to be before the rule kicks in. **Mr. Bauer** reviewed the table relating to "animal unit" as well as the sections referring to land applications. **Senator Kelly** asked for clarification regarding the Memorandum of Agreement (MOA) with DEQ, i.e., what types of reporting/communication are taking place and does the public have access to the data. **Mr. Bauer** responded that dairymen have to come to DEQ to obtain a permit and the ISDA perform the inspections. The DEQ monitors the results of an inspection closely and the public has access to this information.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Hammond moved to adopt 58-0101-0502. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

58-0101-0601

Relating to Rules for the Control of Air Pollution In Idaho

Martin Bauer, Administrator, Air Quality Program, Idaho Department of Environmental Quality, deferred to Mike Edwards, State Implementation and Maintenance Coordinator, Idaho Department of Environmental Quality. **Mr. Edwards** reviewed the details of the Department of Environmental Quality (DEQ) as being tasked with developing a plan to address Regional Haze in Class I Wilderness Areas within Idaho and other Class I areas impacted by Idaho by December 17, 2007 as required by the Federal Clean Air Act, Regional Haze Rule, 40 CFR 51.308. The intent of the Regional Haze Rule is to reduce the impacts of manmade visibility impairing pollutants on Class I areas by 2064. The first implementation plan will cover the time period from 2008 through 2018. The plan will set "Reasonable Progress Goals" and develop control strategies to attain said goals. Through the negotiated rule process, rules were drafted that provide DEQ with the authority to develop "Long-Term Strategies" for making reasonable progress toward improving visibility in mandatory Class I Federal Areas. The proposed rule also provides DEQ with the authority to establish "Reasonable Progress Goals," based on emission reduction control strategies identified through the "Long-Term Strategies" and the implementation of Best Available Retrofit Technologies (BART), in order to obtain the goals and satisfy other

requirements under 40 CFR 51.308 and Subpart P -- Protection of Visibility requirements. The text of this rule was developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule including industry representatives, federal land managers, and public officials. **Senator Darrington** asked how it works when Idaho takes privacy over a program such as this, and the Environmental Protection Agency (EPA) approves our plan, specifically, is compliance regularly audited against our plan. **Mr. Edwards** stated the rule requires, at 5 year intervals, the reasonable progress goals be used as indicators, i.e., that is how the EPA determines whether or not we are meeting our goals. **Vice Chairman Broadword** asked if it is going to take more DEQ personnel to implement this program. **Mr. Edwards** stated this has become his job as the State Implementation Plan (SIP) Coordinator, and through the program, he hopes other non-attainment SIP's can be avoided by watching background concentrations and taking care of issues before they happen. Although this specific process will increase workload, hopefully it will change the way we work and alleviate costs.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Werk moved to adopt 58-0101-0601. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

58-0101-0602

Relating to Rules for the Control of Air Pollution In Idaho

Martin Bauer, Administrator, Air Quality Program, Idaho Department of Environmental Quality, stated although this rule incorporates, by reference, federal rules into our state rules, this rule also specifically exempts certain federal regulations *from* incorporation by reference. For instance, this rule omits the clean unit and pollution control project provisions vacated by the federal court. This rule also omits federal register publications regarding coal fired utilities. By omitting publications regarding coal fired utilities, the Department of Environmental Quality (DEQ) is responding to the motion made by the board in June, as well as Governor Risch's executive order signed October 4, 2006, directing DEQ to opt Idaho out of the mercury cap and trade program. **Senator Kelly** asked how this rule affects sources that provide power to themselves for production. **Mr. Bauer** explained that this rule, along with the Clean Air Mercury Rule (CAMR), are specifically related to the electric utility generators. Under 40 CFR 60.24, that is defined as any facility generating greater than 25 megawatts that sells power to the grid, i.e., sources that create power for their own use are not regulated by this rule. **Senator Kelly** asked if we can opt back in again. **Mr. Bauer** suggested that we can opt back in and between the two rules, we have preserved our ability to opt back in with state-specific rules. Had no action been taken, the federal rules would have automatically applied to Idaho. **Senator Kelly** asked if there were plans to begin proceedings in order to opt back in. **Mr. Bauer** responded the board has asked for the negotiated rulemaking process to begin after the legislative session ends (for opting back in). **Vice Chairman Broadword** asked if the adoption of these

rules would change the decision to opt in. **Mr. Bauer** stated that it would not. **Senator Darrington** asked if the gasification process results in any mercury emissions that would be prohibited by these rules. **Mr. Bauer** explained the coal gasification process itself does create mercury emissions but depending on what they did with that would determine how the rules apply, i.e., if the gas is created for low sulfur diesel, that action is not prohibited by this rule, however, if the coal gasification is used to sell power to the grid, then it falls under this rule. **Senator Kelly** inquired about the details of the “new” negotiated rulemaking. **Mr. Bauer** commented thought has not yet been put into the forthcoming rulemaking. It is estimated that a meeting of the minds will review the energy plan that just came out in addition to any related legislation that has been developed during the 2007 session. It is also estimated that the rulemaking will be heated to some degree and the time line would entail at least one year. **Senator Kelly** voiced her concern regarding the suggestion that DEQ (solely) was to guide the primary direction of the rulemaking. **Mr. Bauer** responded the DEQ would like to examine legislative/interim committee issues and then amass all of the ideas; once it is decided the direction we would like to go as a state, negotiated rulemaking would be entered into. **Toni Hardesty**, Director, Idaho Department of Environmental Quality, clarified that the board put forward a two-part motion, directing DEQ to develop mercury-related rules. The board believes it is appropriate to address and consider regulating mercury emissions from a broad range of sources. The board directed DEQ to begin negotiated rulemaking to develop Idaho-specific mercury standards. The board reiterated that once mercury rules were in place, it may be appropriate to consider the option of opting back into the cap and trade program. **Senator Hammond** posed to Mr. Bauer, recognizing that he is hearing Senator Kelly express concern, although this is very prohibitive, possibly rulemaking down the road may be more liberal. While we haven't had the necessary time yet to figure out what we want to do, this rule holds a place to ensure that we don't go in that direction. In the meantime, between this body and the board, there is ample time to get direction as to what is needed. **Mr. Bauer** concurred.

Adriane Wright, Catholic Charities of Idaho, stood in support of the rule.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Hammond moved to approve docket 58-0101-0602. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

58-0101-0603

Relating to Rules for the Control of Air Pollution In Idaho

Martin Bauer, Administrator, Air Quality Program, Idaho Department of Environmental Quality, reminded the committee, as motioned by the board and directed by Governor Risch, Idaho is opting out of the mercury cap and trade program. This requires two actions to complete. First, Idaho must opt out of the mercury cap and trade program, which rule 58.01.01.0602 does. Second, Idaho must then establish rules that ensure that the state meets its annual coal fired electric utility steam generating

unit mercury budget. The budget for Idaho is zero pounds based on Idaho not having any coal fired power generation at present. This rule prohibits the construction of any coal fired power units as defined in 40 CFR 60.24. This ensures that Idaho will remain below the state mercury emissions cap of zero. This rule and rule 58.01.01.0602 together comprise the plan that Idaho was required to submit to EPA in November to ensure compliance with the Clean Air Mercury Rule.

Adriane Wright, Catholic Charities of Idaho, stood in support of the rule.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Hammond moved to approve docket 58-0101-0603. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:30 p.m.

Senator Patti Anne Lodge
Chairman

Jennifer Andrews
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 31, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, Kelly

MEMBERS ABSENT/ EXCUSED: None

CONVENED: Chairman Lodge called the meeting to order at 3:03 p.m.

GUESTS: See an attached sign-in sheet.

Gubernatorial Appointment Committee consideration of the gubernatorial reappointment of Richard Armstrong as the Director of Idaho Department of Health and Welfare, with a term having commenced January 2, 2007, and would continue at the pleasure of the governor.

Mr. Armstrong offered a brief introduction regarding his background and highlighted a few recent accomplishments on behalf of the Department of Health and Welfare. **Senator Darrington** commented about the positive change in the culture and asked for Director Armstrong's thoughts on changing the mind set. **Mr. Armstrong** stated it is his belief management is responsible for improving functionality, processes, and the overall lives of the people who deliver the services; the focus remains on the front line worker. **Vice Chairman Broadword** asked what is thought to be a vision in the coming years. **Mr. Armstrong** suggested accountability and the ability to produce data that measures outcomes; ultimately the department hopes to serve more clients. **Vice Chairman Broadword** commented it is felt there is a marked improvement as a result of Director Armstrong's involvement and expressed her thanks. **Senator McGee** asked for a broad characterization of progress related to Medicaid reform. **Mr. Armstrong** explained there has been a great deal of advancement, especially since the legislature has been engaged as well as the ownership on behalf of state government as a whole; Idaho can be considered as leading the country regarding this movement. The "one size fits all" model has been abandoned and the needs of the individual populations have become the focus. **Senator Werk** inquired about the department's position with respect to client advocacy roles, i.e., is the service to the employee making its way to the challenged populations. **Mr. Armstrong** noted an observation of incredible need in the state and a finite amount of resources to serve that need, placed on the backs of the employees in an attempt to distribute services. Moving

forward it is going to be important to strengthen processes. **Senator Werk** asked about the importance and approach of replacing the two antiquated computer systems. **Mr. Armstrong** explained the two-year work plan has been presented, involving many levels. The system will be run in a parallel manner as the implementation will be introduced in steps, giving the test pieces an opportunity to respond to the uniqueness of each component. A new level would not be introduced unless there is success with the level prior. **Senator Werk** remarked it was his hope a new director would eliminate a culture of withholding and introduce greater informational sharing and increase transparency. **Chairman Lodge** thanked Director Armstrong for his willingness to take on a monumental role.

Gubernatorial Appointment

Committee consideration of the gubernatorial appointment of Tom Stroschein for the Idaho Board of Health and Welfare; to serve a term having commenced August 21, 2006, and expiring January 7, 2009.

Mr. Stroschein detailed his background as having served two state commissions and several boards for 27 years, sheep ranching for 24 years, and also recently serving as a county commissioner and volunteering to be on the District 2 regional board for mental health as well as the state planning council. **Senator Kelly** asked how long Mr. Stroschein had been serving on the board thus far and also wanted to know how he felt about the changes made during the last legislative session (increasing the time and duty commitment of board members). **Mr. Stroschein** confirmed he has been a part of the board since August, approximately three meetings, and he is looking forward to the challenges associated with additional responsibilities, especially regarding behavioral/mental health-related issues. **Vice Chairman Broadsword** commented she was looking forward to good things from the board and understood that one person, who was thought to be leaving at one time, has decided to remain on the board because of the renewed energy and direction.

Chairman Lodge introduced Quane Kenyon, Chairman, Idaho Board of Health and Welfare. **Senator Kelly** commented about the expanded duties and asked Mr. Kenyon if it was too much to ask of the members. **Mr. Kenyon** stated that he, too, enjoys the increased responsibilities. Additionally, the board would appreciate more information from the Department of Health and Welfare. **Senator Kelly** also commented about legislation she intends to present that would shift the legislative members of the board from voting members to "ad-hoc" members, citing separation of powers.

Rules

27-0101-0601

Relating to Rules of the Idaho Board of Pharmacy, Remote Dispensing Pilot Project

Richard (Mick) Markuson, Executive Director, Idaho Board of Pharmacy, explained the rule provides a mechanism for the initiation of a Remote Dispensing Pilot Program that will allow for the dispensing of

prescriptions through remote dispensing machines. Because a number of small communities have lost their pharmacies, the rulemaking is necessary to protect public health through the use of telecommunications and remote dispensing to patients at a distance from the pharmacy and pharmacist providing the pharmaceutical care. **Senator Broadsword** asked what types of medication is in the machine. **Mr. Markuson** explained physicians, dentists, and pharmacists in the hosting facility determine the formulary for the community the medication is dispensed in. Another machine contains 340B* drugs, supplying them at a lesser cost for patients that meet the criteria for that drug. **Senator Bair** asked for how it is that physicians do not opt to dispense said drugs. **Mr. Markuson** explained that while doctors are able to dispense the drugs, it is time consuming due to several insurance issues and 340B drugs are also tightly controlled by the government - it is felt practitioners did not want to enter into that "type" of business. **Senator Bair** inquired as to the cost of a machine and who pays for it. **Mr. Markuson** commented the Idaho Board of Pharmacy stayed away from the monetary details of the proposed machines. A pharmacy pays for the machine. **Vice Chairman Broadsword** asked if there is the possibility of receiving samples and what cost is associated. **Mr. Markuson** stated there could be a cost (at the discretion of the physician) and the sampling would not be regulated by the Board of Pharmacy.

**The 340B Drug Pricing Program was established through the Veterans Health Care Act of 1992. Section 340B of the Public Health Service Act provides discounts on outpatient drug purchases for eligible "covered entities" similar to the Medicaid discounts mandated by the federal government in 1990. The program enables disproportionate share hospitals, community health centers, clinics and other safety net providers to purchase outpatient pharmaceuticals at discounted pricing, thereby expanding access to care to low-income and vulnerable segments of the population.*

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion

Senator Hammond, understanding this is a continuation of a pilot project for another year, moved to approve docket 27-0101-0601. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

27-0101-0602

Relating to Rules of the Idaho Board of Pharmacy, Specificity Regarding the Positive Identification Records To Be Kept By Pharmacies When Filling Prescriptions For Controlled Substances

Richard (Mick) Markuson, Executive Director, Idaho Board of Pharmacy, requested the committee reject this rulemaking as the House Health and Welfare Committee rejected the docket as presented and directed the Idaho Board of Pharmacy to sit down with other interested parties and reach a compromise. **Senator Darrington** suggested to the committee the next steps for the Senate Health and Welfare Committee is to take no action; the committee would instead act on a resolution of

rejection from the house.

Motion **Senator Darrington** asked for consideration of 27-0101-0602 be withdrawn by **unanimous consent**. Hearing no objection, **Vice Chairman Broadsword** ruled the docket be withdrawn.

27-0101-0603 Relating to Rules of the Idaho Board of Pharmacy

Richard (Mick) Markuson, Executive Director, Idaho Board of Pharmacy, explained the proposed rulemaking clarifies the obligation of licensed pharmacies to submit theft loss information to the Idaho Board of Pharmacy. The pharmacies are already required to submit this information to the Drug Enforcement Agency (DEA) and they need only send a copy of the completed DEA form to the board. This information will assist the board in protecting the public from the effects of unauthorized use and diversion of controlled substances. **Senator Werk** asked if adulteration of product was considered loss/theft. **Mr. Markuson** commented the new language addresses the reporting of theft or loss as required by the DEA. **Senator Werk** asked if there was a process for reporting adulteration to the board. **Mr. Markuson** explained the language already in existence covers adulteration.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary.

Motion **Senator Coiner** moved to approve docket 27-0101-0603. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:09 p.m.

Senator Patti Anne Lodge
Chairman

Jennifer Andrews
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 1, 2007
TIME: 3:00 p.m.
PLACE: Room 437
MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Bair, Hammond, Kelly
MEMBERS ABSENT/ EXCUSED: Senators Coiner, Werk
CONVENED: Chairman Lodge called the meeting to order at 3:05 p.m.
GUESTS: See an attached sign-in sheet.

Routing Slip

RS16469 Relating to the Poison Control Act, Repeal

Dick Schultz, Deputy Director, Health Services, Idaho Department of Health and Welfare, detailed poison control contract costs and explained the rule came about as a result of uncertainty of funding to maintain operations of the Poison Control Center. This year the Department of Health and Welfare was notified that the \$100,000 in federal Temporary Assistance to Needy Families (TANF) funds that have been used to support Poison Control since the 1990's can no longer be used to that end. In addition, the department has been notified by the contractor providing the service, Rocky Mountain Poison Control, that the contract request for fiscal year 2008 will increase by \$62,500. The short time frame within which to try and accommodate the size of those increases has resulted in a budget request for a 36% increase in general funds to maintain the service. Given the uncertainty of receiving that large of an increase, and the inability to provide the service, it is necessary to manage the potential liability for the state by eliminating the mandate to provide the poison control service. **Senator Darrington** asked if this means we are threatened with the loss of maintaining a poison control center altogether. **Mr. Schultz** communicated other monies/negotiations will be sought but if they are not able to finalize details by July 1, 2007, liability is posed because of a mandate. **Senator Darrington** asked what options are available if no poison control center is available. **Mr. Schultz** responded routing calls to the Centers for Disease Control (CDC) is one option, but if the statute is repealed, many options could be explored in order to identify a lower level of service for a lower cost.

Motion **Senator McGee** moved to print RS16469. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote** with Senator Werk voting nay.

RS16468C1

Relating to the Idaho Emergency Medical Services Physician Commission

Dia Gainor, Bureau Chief of Emergency Medical Services with the Department of Health, explained this legislation would assure the authority to take certificate action against Idaho certified Emergency Medical Services (EMS) providers by the EMS Bureau and transfer the authority to make recommendations about such actions from the state EMS Advisory Committee (as currently dictated in IDAPA 16.02.03.601) to the Emergency Medical Services Physician Commission (EMSPC). The EMSPC is charged, by §56-1013a, Idaho Code, to “establish standards for scope of practice and medical supervision for certified personnel, ambulance services and non-transport agencies licensed by the department.” The EMS Bureau is currently charged with the investigation of complaints and choosing disciplinary actions against EMS personnel (IDAPA 16.02.03.515). The EMS Bureau Chief may or may not have the clinical expertise to make an appropriate decision in these matters while the physicians on the EMSPC would. This legislation would clarify the duty of the EMS Bureau to sanction EMS providers when appropriate and grant the authority to make recommendations about the disposition of disciplinary cases involving EMS personnel to the EMSPC. The proposed amendment to §56-1017, Idaho Code, will clarify the EMS Bureau’s responsibility for the management of complaints, investigations and certification and license actions against certified EMS personnel and licensed EMS services. The proposed amendment to §56-1013a, Idaho Code, will then transfer the authority to the EMSPC to make recommendations to the EMS Bureau Chief, concerning disciplinary cases involving EMS personnel.

Motion

Senator Werk moved to print RS16468C1. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

RS16749

Relating to Pharmacists

Robert Vande Merwe, Executive Director, Idaho Healthcare Association, stated the purpose of this legislation is to simplify the process of transmitting a prescription to a pharmacist via facsimile from a health care facility. **Vice Chairman Broadsword** asked how it is a physician can typically phone a pharmacist to discuss medication options in response to symptoms and a nurse cannot. **Mr. Vande Merwe** explained in an ideal world two calls would be made; physician to nurse and nurse to pharmacist. In the future, technology might create that possibility.

Motion

Senator McGee moved to print RS16749. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

Gubernatorial Appointment

Committee vote of the gubernatorial reappointment of Richard Armstrong as the Director of Idaho Department of Health and Welfare, with a term having commenced January 2, 2007, and would continue at the pleasure of the governor.

- Motion** **Vice Chairman Broadsword** moved to approve and send to the floor of the Senate the nomination of Richard Armstrong as the Director of Idaho Department of Health and Welfare. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.
- Gubernatorial Appointment** Committee vote of the gubernatorial appointment of Tom Stroschein for the Idaho Board of Health and Welfare; to serve a term having commenced August 21, 2006, and expiring January 7, 2009.
- Motion** **Senator McGee** moved to approve and send to the floor of the Senate the nomination of Tom Stroschein for the Idaho Board of Health and Welfare. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.
- Gubernatorial Appointment** Committee consideration of the gubernatorial reappointment of Suzanne Budge Schaefer to the Hazardous Waste Facility Siting License Application Review Panel, with a term having commenced March 6, 2006, and expiring March 6, 2009.
- Orville Green**, Waste Management and Remediation Division Administrator, Department of Environmental Quality, introduced **Ms. Schaefer**, who detailed her degrees in geology, offered an overview of her educational background, shared history about being raised in Soda Springs, and highlighted her mining/United States Geological Society (USGS) involvement/lobbyist roles. **Senator Darrington** asked if it is a detriment to the local communities (politically) when under half of the board is not from that city/county, versus the Solid Waste Act which calls for eight members (three appointed by the Director of the Department of Environmental Quality, one shall be a public member appointed by the governor, two shall be appointed by the city council of the city located closest to or in which the commercial solid waste facility is proposed to be located, at least one of whom shall be a resident of the city, and two members shall be appointed by the county commission and be residents of the county where the commercial solid waste facility is proposed to be located). **Ms. Schaefer** reported she cannot recall split votes or disagreement in decisions, i.e., the group has been able to identify issues of concern and work through them cooperatively. **Senator Kelly** asked how many times the group has convened in response to applications. **Ms. Schaefer** commented there have been three occasions. **Senator Kelly** asked Ms. Schaefer if she feels the process works. **Ms. Schaefer** explained yes, mainly due to existing relationships and facilities where the permittee was well-organized and documented.
- Gubernatorial Appointment** Committee consideration of the gubernatorial reappointment of Jay Kunze to the Hazardous Waste Facility Siting License Application Review Panel, with a term having commenced March 6, 2006, and expiring March 6, 2009.
- Mr. Kunze** presented his background as a Licensed Professional Engineer, Certified Health Physicist, and Professor of Nuclear Engineering. **Vice Chairman Broadsword** thanked Mr. Kunze for his participation and acknowledged an impressive, lengthy resume.

**Gubernatorial
Appointment**

Committee consideration of the gubernatorial reappointment of Mark VonLindern to the Hazardous Waste Facility Siting License Application Review Panel, with a term having commenced March 6, 2006, and expiring March 6, 2009.

Mr. VonLindern highlighted his Lewiston roots and his time as a Civil Engineer, Public Works Director, Water Quality Engineer, Manager within the Idaho Department of Environmental Quality, and Environmental/Manufacturing Engineering Manager. Mr. VonLindern commented on the success of the panel and expressed they are balanced and work well together.

**Gubernatorial
Appointment**

Committee consideration of the gubernatorial appointment of Britt Raubenheimer to the Idaho Commission for the Blind and Visually Impaired (ICBVI); to serve a term having commenced July 1, 2006, and expiring July 1, 2009.

Ms. Raubenheimer explained her relevant background as a research scientist who teaches undergraduate and high school students, manages a team of staff assistants/engineers/students, supervises annual budgets of \$500,000, raises over \$3.6 million dollars in federal and foundation grants, acts a grant reviewer, and serves as a certified grant writing professional.

Senator Shawn Keough, Representative George Eskridge, and Representative Eric Anderson, stood in support of Ms. Raubenheimer's nomination and voiced their sentiment regarding how valuable her knowledge and contributions are.

Senator Darrington asked Ms. Raubenheimer if she was associated with any other blind advocate group and if so, would it please be stated for the record if those associations would detract from her judgement or capacity as a member of the commission. **Ms. Raubenheimer** explained that she is not affiliated with any other groups serving the blind and no it would not affect her involvement. **Vice Chairman Broadsword** asked for Ms. Raubenheimer's vision for the commission. **Ms. Raubenheimer** suggested her goals include ensuring that blind and visually impaired Idahoans receive the training needed to secure employment or to remain as active/independent (contributing) members of the community, working with budgets to deliver the best possible product, and educating others about the ICBVI mission. The commission is also poised to take over educational outreach activities from the Idaho School for the Deaf and Blind. **Vice Chairman Broadsword** and **Senator McGee** expressed their appreciation for Ms. Raubenheimer's ability to inspire others.

Gubernatorial Appointment

Committee consideration of the gubernatorial appointment of Dean Nielson to the Idaho Commission for the Blind and Visually Impaired; to serve a term having commenced April 27, 2006, and expiring July 1, 2008.

Mr. Nielson explained he currently serves as the Executive Director of (Living Independently For Everyone) LIFE, Inc., serving 19 counties in Southeastern Idaho, serves on several national panels, and has spent the last ten years involved in grassroots community efforts and state involvement centered around people with disabilities.

Gubernatorial Appointment

Committee consideration of the gubernatorial appointment of David Hand to the Commission for the Blind and Visually Impaired; to serve a term having commenced July 1, 2006, and expiring July 1, 2009.

Mr. Hand reviewed his education from the University of Nevada and multiple degrees (and related roles) held in geology. Mr. Hand also offered his mining history and background as a member of the Idaho Lodging and Restaurant Association and motel proprietor for many years as well as an active member of the Lions and Rotary Club, Blind Support Group, and Blinded Veterans Association. **Senator Werk** asked how Mr. Hand lost his vision and what was available to him at the time his sight was impaired. **Mr. Hand** explained that his condition is known as Cone-Rod Dystrophy (CRD), an inherited progressive disease that causes deterioration of the cone and rod photoreceptor cells that often results in blindness. Initially the ophthalmologist was seen in Salt Lake City via long commutes and the latest therapy was not taking effect. After moving to Boise it was beneficial/encouraging to become active with the programs offered through Veteran's Affairs and the Blind Rehabilitation Center as well as the ICBVI. **Vice Chairman Broadword** asked for Mr. Hand's impression of the progress of the ICBVI since he has served on the commission for some time. **Mr. Hand** stated that while they may face challenges as a result of taking on additional tasks from the Idaho School for the Deaf and Blind, the work is not insurmountable and the commission does very well and feels hopeful for the future. **Senator Darrington** commented he feels the ICBVI staff is the strongest staff he has experienced during his tenure and expressed his appreciation.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:00 p.m.

Senator Patti Anne Lodge
Chairman

Jennifer Andrews
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 5, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Kelly

MEMBERS ABSENT/ EXCUSED: Senator Werk

CONVENED: Chairman Lodge called the meeting to order at 3:03 p.m.

GUESTS: See an attached sign-in sheet.

MINUTES: **Senator McGee** moved to accept the minutes dated January 18, 2007. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Routing Slip

RS16492 Relating to the Board of Dentistry, Naming and Ownership Standards for Dental Practices

Mike Sheeley, Executive Director, Idaho State Board of Dentistry, deferred to **Steve Tobiason**, Legal Counsel representing the Idaho Board of Dentistry, who explained the proposal amends Idaho Code 54-924, addressing the naming and ownership standards for dental practices, through clarification, to include (1) The provisions of Idaho Code 54-924 regarding naming, ownership, and control of dental practices have not been amended since the passage of the Idaho business corporation act, Idaho limited partnership act, Idaho limited liability company act, and the assumed business names act of 1997; (2) The ADA Policy on Corporate Practice includes a resolution that “the health interests of patients are best protected when dental practices and other private facilities for the delivery of dental care are owned and controlled by members of the dental profession” (Ownership of Dental Practices 1974:635); (3) The Idaho Professional Service Corporation (PSCA) was enacted in 1963. In passing said legislation, the Idaho Legislature made it clear its intent was to “provide for the incorporation of an individual or group of individuals to render the same or allied professional services to the public for which such individuals are required by law to be licensed or to obtain other legal authorization.” Idaho Code 30-1301; (4) Idaho Code 54-924(3) currently provides that a dentist may not practice dentistry with other individuals except as provided by the PSCA. Because the PSCA does not apply to partnerships or sole proprietorships, Idaho Code 54-924(3) should be clarified to specify that

dentists can not engage in the practice of dentistry with individuals or corporations, regardless of the type of business entity, who are not also members of the dental profession licensed to practice dentistry in the state of Idaho; (5) Idaho Code 53-615 limits ownership to licensed professionals. This section also limits the rendering of services to patients by licensed professionals. Membership in a limited liability company may only be extended to "a person who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the company was organized or professional corporations, partnerships or limited liability companies all of whose shareholders, partners or members are duly licensed or otherwise legally authorized to render the same specific professional services as those for which the professional company was organized;" (6) Other states have similar provisions. **Vice Chairman Broadword** asked how it is a wife, acting as a registered hygienist in a practice, cannot take over the business in the case her dentist husband passes away. **Mr. Tobiason** explained there have been other acts adopted in other parts within the code, allowing the ability to choose a number of different business forms one could operate under. Although dentists have traditionally operated under sole proprietorships, there have been choices, other statutes have been complied with, and the ownership must have been with the dentist. **Senator Kelly** inquired about the business entity one chooses to operate under and how that affects interested parties from out of state. **Mr. Tobiason** pointed out those dentists who are not dually licensed in both states cannot have an interest in the Idaho practice. For example, a few years ago, an outside corporation wanted to begin a practice in Idaho so they formed one corporation of only dentists (to be compliant) and another corporation licensed through the Department of Insurance, so there was a guarantee that all treatment decisions would be made by dentists licensed in Idaho (and that is what the language of RS16492 addresses). **Senator Darrington** asked for clarification regarding the dental clinic on Fairview Avenue thought to be strictly a Medicaid clinic, part of a chain of clinics, and how the proposed legislation would affect that firm. **Mr. Sheeley** confirmed the clinic, also known as "Small Smiles Dentistry," as having all owners actively licensed in Idaho. **Senator Darrington** asked how a chain of practices, franchises spanning many states, can operate in Idaho. **Mr. Sheeley** stated Small Smiles is a wholly-owned subsidiary corporation; the ownership of this particular corporation by Idaho licensed dentists has been verified. **Chairman Lodge** asked if a practice could be started in Caldwell and another practice started in another area in Idaho. **Mr. Sheeley** confirmed yes, as long as the owner is a licensed Idaho dentist, and explained the importance for a dentist and his practice to be licensed and operated in Idaho addresses treatment issues and disciplinary action. **Senator Hammond** asked how a new dentist would be affected (fresh out of dental school, long on debt/short on capital, considering a practice in Boise). **Mr. Tobiason** suggested a lender does not become a co-owner under this legislation. **Senator Coiner** asked how a community property state (one spouse is a dentist, one is not) would be affected. **Mr. Tobiason** commented research shows a non-dentist spouse (a non-licensee) is entitled to 50 percent in the value of the community property

only; a court would determine the definition of "property."

Motion

Senator McGee moved to print RS16492. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

RS16474

Relating to the Board of Dentistry, Authorization to Take Disciplinary Action Against a License Based Upon a Criminal Conviction

Steve Tobiason, Legal Counsel representing the Idaho Board of Dentistry, suggested the proposal amends and clarifies Idaho Code 54-924 regarding the definition of conviction and revocation of a license based upon a conviction. Due process requires a hearing prior to automatic revocation of a license. Amending this statute would remove antiquated language and ensure due process rights. The current statute discusses revocation or discipline upon a "judgment of conviction." Idaho Code 19-2601(3) permits a court to withhold judgment in lieu of entering a judgment of conviction. When a defendant receives a withheld judgment, there is no sentencing document entitled judgment of conviction. Without the clarification, a licensee could be permitted to retain their license if they receive a withheld judgment rather than a judgment of conviction; even if the conduct was a felony. A licensed dentist was recently convicted by a unanimous jury of twelve people of "Enticing of Children Over the Internet" [a felony under Idaho Code 18-1509A]. The judge entered a withheld judgment and ordered a ten year probation. Following a disciplinary hearing initiated by the Board, a hearing officer determined she lacked authority to discipline a licensee because the statute did not explicitly include a withheld judgment as grounds for discipline. Essentially two dentists could commit the same felony crime and be found guilty by a jury of their peers of a felony crime, such as armed robbery, rape, or aggravated assault. If at the time of sentencing the judge granted Dentist A a withheld judgment and Dentist B received a judgment of conviction, Dentist A (with the withheld judgment) would be immune from disciplinary action against his or her license, while the Dentist B would be subject to discipline. The primary obligation for the Board of Dentistry and purpose is to safeguard the health, welfare, and safety of the public whom a dentist serves. This duty would be totally compromised if the Board were forced to treat dentists committing the same felony crime differently simply based on the type of sentence they received from two different judges. There are many other statutes treating conviction and a withheld judgment the same for purposes of disciplinary or licensing actions. **Senator McGee** asked for examples of other statutes. **Mr. Tobiason** referenced Idaho Code 36-2113, Outfitters and Guides: "For the purposes of this section, the term "conviction" shall mean a finding of guilt, an entry of a guilty plea by a defendant and its acceptance by the court, or a forfeiture of bail bond or collateral deposited to secure a defendant's appearance, suspended sentence, probation or withheld judgment." **Senator Darrington** asked how misdemeanor convictions are handled. **Mr. Tobiason** commented on the language that states the board "may" revoke a license for convictions of a crime.

Motion

Senator Hammond moved to print RS16474. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

RS16473

Relating to the Board of Dentistry, To Provide For a Retired Dental Hygienist Who Satisfied the Applicable Licensure Requirements a "Volunteer" License by the Board of Dentistry

Mike Sheeley, Executive Director, Idaho State Board of Dentistry, explained the proposal amends and clarifies Idaho Code 54-935 to authorize the issuance of volunteer licenses to qualified dental hygienists. In 2004, the Idaho Legislature passed legislation (Idaho Code 54-935) that authorized the Idaho Board of Dentistry to issue volunteer licenses to qualified retired dentists. A volunteer license authorized a qualified retired dentist to provide volunteer dental treatment to persons in "extended access oral health care" settings. In general, extended access oral health care settings include, but are not limited to, public (for example, district health care centers) and charitable dental programs. In order for dentists to qualify for volunteer licenses, they must be retired, must have maintained their dental license in good standing during the period of their active practice of dentistry and must agree that they will restrict their volunteer dental services to extended access oral health care settings. Subsequent to the enactment of Idaho Code 54-935, the Idaho Dental Hygiene Association approached the Board of Dentistry and requested that dental hygienists be included for purposes of the volunteer licensing program. The Board of Dentistry strongly supported the request of the Idaho Dental Hygiene Association and is proposing by means of Senate Bill 1092 to facilitate the issuance of volunteer licenses to qualified dental hygienists in Idaho. **Senator Kelly** asked how dental hygienists would be affected. **Mr. Sheeley** explained recent rulemaking addressed active licensed dental hygienists only, not volunteer/retired dental hygienists; volunteer dental hygienists would not be allowed to perform restorative work as an active licensed hygienist would.

Motion

Senator McGee moved to print RS16473. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

RS16850

Relating to the Board of Health and Welfare, Changing the Status of the Chairs of the Senate and House Health and Welfare Committees from Voting Members of the Board of Health and Welfare to Non-Voting Members of the Board.

Senator Kelly communicated the proposed legislation changes the status of the chairs of the Senate and House Health and Welfare Committees from voting members of the Board of Health and Welfare to non-voting members of the board. After consulting with the Office of the Attorney General, it was found that while bills enacted are accorded a presumption of constitutionality, and while legislators may sit on boards that they create, and while rulemaking is a function that is delegated from the Legislative Department to the Executive Department, the direct participation of Legislators in the rulemaking process, combined with the Board of Health and Welfare's supremacy over the Director of the

Department of Health and Welfare, likely warrants a constitutionally impermissible encroachment upon the powers of the Executive Department.

Motion **Senator McGee** moved to print RS16850. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Gubernatorial Appointment Committee vote of the gubernatorial reappointment of Suzanne Budge Schaefer to the Hazardous Waste Facility Siting License Application Review Panel, with a term having commenced March 6, 2006, and expiring March 6, 2009.

Motion **Senator Darrington** moved to approve and send to the floor of the Senate the nomination of Suzanne Budge Schaefer to the Hazardous Waste Facility Siting License Application Review Panel. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Gubernatorial Appointment Committee vote of the gubernatorial reappointment of Jay Kunze to the Hazardous Waste Facility Siting License Application Review Panel, with a term having commenced March 6, 2006, and expiring March 6, 2009.

Motion **Senator McGee** moved to approve and send to the floor of the Senate the nomination of Jay Kunze to the Hazardous Waste Facility Siting License Application Review Panel. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Gubernatorial Appointment Committee vote of the gubernatorial reappointment of Mark VonLindern to the Hazardous Waste Facility Siting License Application Review Panel, with a term having commenced March 6, 2006, and expiring March 6, 2009.

Motion **Senator Hammond** moved to approve and send to the floor of the Senate the nomination of Mark VonLindern to the Hazardous Waste Facility Siting License Application Review Panel. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

Gubernatorial Appointment Committee vote of the gubernatorial appointment of Britt Raubenheimer to the Idaho Commission for the Blind and Visually Impaired (ICBVI); to serve a term having commenced July 1, 2006, and expiring July 1, 2009.

Motion **Senator Kelly** moved to approve and send to the floor of the Senate the nomination of Britt Raubenheimer to the Idaho Commission for the Blind and Visually Impaired. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Gubernatorial Appointment Committee vote of the gubernatorial appointment of Dean Nielson to the Idaho Commission for the Blind and Visually Impaired; to serve a term having commenced April 27, 2006, and expiring July 1, 2008.

Motion **Senator Hammond** moved to approve and send to the floor of the Senate the nomination of the gubernatorial appointment of Dean Nielson to the Idaho Commission for the Blind and Visually Impaired. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

Gubernatorial Appointment

Committee vote of the gubernatorial appointment of David Hand to the Commission for the Blind and Visually Impaired; to serve a term having commenced July 1, 2006, and expiring July 1, 2009.

Motion

Senator McGee moved to approve and send to the floor of the Senate the nomination of David Hand to the Commission for the Blind and Visually Impaired. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

S1069

Relating to Vital Statistics, Certification of Death by Health Care Professionals

James Aydelotte, Bureau Chief of the Bureau of Health Policy and Vital Statistics, Department of Health, explained in 2004 Idaho Code 54-1402 was changed to allow advanced practice professional nurses to work without physician supervision. Currently physicians and coroners are the only persons authorized to sign death and stillbirth certificates and authorize final disposition or removal of dead bodies and stillborn fetuses. Senate Bill 1069 would make the Vital Statistics Act consistent with Idaho Code by allowing advanced practice professional nurses to have the same certifying authority as physicians and coroners and also gives physician assistants the same authority, as well as provides the opportunity for coroners, in the absence of a physician, physician assistant or advanced practice medical nurse to certify to the cause of death. The changes not only make the Vital Statistics Act consistent with other state law but alleviate challenges resulting from the rural nature of our state. In some rural areas the only medical professional may be an advanced practice medical nurse or a physician assistant. By allowing these competent medical professionals to have the same certifying authority as a physician or coroner, delays can be avoided that can cause hardship on families and violations of statutorily imposed deadlines. **Senator Bair** requested the definition of advanced practice professional nurse and asked if they are more qualified than an RN with a bachelor's degree. **Mr. Aydelotte** stated a professional nurse is licensed as a person deemed as having additional skills, knowledge, and experience by national accreditation, and they are thought to have "advanced" degrees. **Senator McGee** inquired if there have been cases in Idaho where death or a stillbirth has been certified incorrectly and if what the reasons were. **Mr. Aydelotte** commented there have been instances where certificates have had to be turned back because they were signed by advanced practice professional nurses whereas it was clearly specified that only a physician or coroner could certify the cause of death. **Senator Hammond** asked about matters of timing and the ability to speed things up for the family in certain circumstances. **Mr. Aydelotte** explained in some cases, delays are experienced because the physician's assistant works under the direction of a physician; the assistant might certify immediately but waits for the physician who may not be on site (geographic restrictions, rotating medical professionals, etc.) **Vice Chairman Broadsword** asked how midwives are considered. **Mr. Aydelotte** pointed out that only a Certified Nurse Midwife may certify and that definition had already been in code.

Motion **Senator Hammond** moved to send S1069 to the floor of the Senate with a “Do Pass” recommendation. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

S1068 Relating to Vital Statistics, Definitions Used By the Vital Statistics Act

James Aydelotte, Bureau Chief of the Bureau of Health Policy and Vital Statistics, Department of Health, reminded the committee the changes are simple and most are housekeeping items. Legislative services reordered the definitions into alphabetic order which is why it would appear as if every definition has been changed; however, most remain unchanged. Four simple changes to the definitions are being proposed that have become outdated or the scope of the professional practice has changed. The definition for “physician” is being made consistent with Idaho code 54-1803. The word “recently” is being removed from the definition of “dead body” because it does not reflect the fact that dead bodies can be found a long time after death occurred. The third change is to clarify the definition of live birth with an addition to more accurately distinguish between a fetal death and a live birth in those tragic situations when a baby dies shortly after birth. The National Center for Health Statistics, the agency in charge of vital statistics, and the World Health Organization, recommend this language. The fourth change is to add definitions of physician assistant and advanced practice professional nurse. The changes will make this section of law easier to understand and definitions consistent with current professional practice. **Senator McGee** asked if there have been cases in Idaho when someone has been determined as deceased incorrectly. **Mr. Aydelotte** communicated by adding advanced practical professional nursing language, it is projected better information will be gathered; advanced practice professional nurses oftentimes provide the direct care to the patient and know the medical condition of the patient best.

Motion **Vice Chairman Broadsword** moved to send S1068 to the floor of the Senate with a “Do Pass” recommendation. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:55 p.m.

Senator Patti Anne Lodge
Chairman

Jennifer Andrews
Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary’s Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 6, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: NONE

CONVENED: **Chairman Lodge** called the meeting to order at 3:10 p.m.

MINUTES: **Senator Bair** made a motion to approve the Committee Minutes of January 22, 2007 as written. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

RS 16581 Relating to Public Health. **Vice Chairman Broadsword** explained this RS deals with the food safety act and Idaho Code that deals with the ability for Health Districts to charge a fee for their food and safety inspections.

Senator Werk asked if there was a fiscal note or impact. **Vice Chairman Broadsword** said there is no impact on the State General Fund. The elimination of the Food Safety Fund will save the Public Health District a minimum of \$6,000.00 per year.

There seemed to be a problem with no Statement of Purpose (SOP) attached to RS 16581.

MOTION: A motion was made by **Senator Hammond** to send RS 16581 to print, recognizing there is some confusion on the SOP. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

RS 16831 Relating to the Environment. **Roy Eiguren** representing U.S. Ecology Corporation and CH2MHill. **Mr. Eiguren** asked that RS 16831 be withdrawn. One of their sponsors reviewed the RS and format and realized changes needed to be made. This legislation is a comprehensive rewrite of Idaho Statutes that deal with regulations for radio activity. **Mr. Eiguren** left a briefing paper for the committee with issues to be addressed when this RS comes back before the committee on Monday.

S 1047 Relating to the Trauma Registry. **Senator Darrington** presented this bill as dealing with the removal of the January 1, 2008 sunset from trauma registry establishment law. **Senator Darrington** read a part of the original SOP for this registry. He still believes today this has the

potential to effect health care in the state of Idaho in a positive way. When this was written **Senator Darrington** made a point that the legislature specifically intends that the system shall not rely upon general funds. Secondly, he wrote in anti-predatory language to get the agreement of the hospitals around the state. **Senator Darrington** suggests that the sunset not be removed, and not change the legislation in any way and allow the trauma registry to work.

Steve Millard, president of the Idaho Hospital Association said he is here to support this bill. He explained this bill was brought by the Idaho Medical Association primary with their trauma surgeons. They felt it important to improve the quality of care in our trauma systems. **Mr. Millard** presented the committee with the very first Trauma Registry Report. The reason the sunset clause was put on in the first place was to alleviate the concern of their members. The concern is gone, the registry is running in a pilot phase. **Mr. Millard** introduced the director of the registry, **Ginger Floorchinger-Franke**, and Vice President of Operations and Registry Services **Stacey Carson**. **Mr. Millard** said this is to improve patient care and we think it will, if it's allowed to go forward.

MOTION: **Vice Chairman Broadsword** made a motion to send S 1047 to the floor with a do pass recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

S 1048 Relating to the Idaho Hospital Contribution Act. **Mr. Millard** explained this is a bill designed specifically to leverage federal medicaid dollars, to enhance reimbursement to the non-public/private hospitals in Idaho. He explained the background for this bill.

A lengthy discussion ensued with several explanations regarding the intricacies of this bill. **Dick Schultz**, Deputy Director, Health & Welfare helped with some of the questions.

MOTION: A motion was made by **Senator Hammond** to send S 1048 to the floor with a do pass recommendation. **Senator Broadsword** seconded the motion.

Senator McGee wanted to declare he works for a hospital. Pursuant to Senate Rule 39h he will vote on this bill. **Senator Kelly** noted the law firm she works for represents the hospital association, which does not affect her decision. The motion carried by **voice vote**.

PRESENTATION: HCR 40 Task Force Report by **William von Tagen**, Deputy Attorney General explained last year the legislature requested this Task Force. Lines 21 thru 34 of HCR 40 directed this task force to develop a statewide, universal system or form for physician orders for life-sustaining treatment. They call this form Physician Orders for Scope of Treatment (POST). This task force also asked that the Attorney General's Office and Department of Health and Welfare lead the efforts to develop that POST, consult with the health care industry, create a form for universal or statewide application, develop implementing guidelines, and provide draft legislation. This legislation was printed in the House earlier today. **Mr. von Tagen** introduced some of the

members of the task force and explained the magnitude of this project.

Chairman Lodge thanked all the members of this task force for their dedication. She asked if all her papers are on file in Nampa and she happens to be admitted in Caldwell, how will they know of her wishes? **Mr. von Tagen** said there will be a registry and a wallet size card provided.

A discussion followed regarding the POST form. **Mr. von Tagen** explained the task force wanted to keep this form to one page. The physician who signs this POST form would have the original and the patient a copy. If the patient resides in a nursing home, the nursing home would have a copy.

The public is familiar with the acronym DNR. There are some concerns that the POST acronym might create some confusion. **Mr. von Tagen** said if there are any problems they can go back and change.

Senator Bair asked about the electronic side of this. **Mr. von Tagen** explained one part of the bill is to authorize an electronic system with the Secretary of State that hospitals could transfer from entity to entity. Right now there is a Health Care Registry at the Secretary of State's Office. They already have received 400 health care directives. **Mr. von Tagen** said there are still some problems that need to be addressed.

Chairman Lodge noted this is a step in the right direction and again thanked this task force.

ADJOURNMENT: There being no further business, **Chairman Lodge** adjourned the meeting at 4:17 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Barbara Davidson
Assistant Secretary

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 7, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: NONE

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

RS 16846 Relating to Long-Term Care Partnership Program - **Bob Aldridge**, Attorney representing Trust and Estate Professionals of Idaho, Inc. (TEPI) explained this RS brings Idaho law into compliance with Idaho Code. RS 16846 also allows Medicaid rules promulgated by the Idaho Department of Health & Welfare to be in compliance with the Deficit Reduction Act, effective February 8, 2006.

MOTION: **Senator McGee** made a motion to print RS 16846. **Senator Kelly** seconded the motion. The motion carried by **voice vote**.

RS 16847 Relating to Public Assistance Law - **Mr. Aldridge** said this bill brings Idaho law into compliance with federal Medicaid law. This area will be the subject of continued negotiated rule making.

MOTION: A motion was made by **Senator McGee** to send RS 16847 to print. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

S 1077 Relating to Pharmacists - **Robert Vande Merwe**, Idaho Health Care Association thanked the committee for printing this bill last week. He explained this legislation is to simplify the process of transmitting a prescription to the pharmacist via facsimile from a health care facility.

MOTION: **Vice Chairman Broadsword** made a motion to send S 1077 to the floor with a do pass recommendation. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

S 1078 Relating to the Idaho Emergency Medical Services (EMS) Physician Commission - **Dia Gainor**, Chief, Department Health & Welfare Emergency Medical Services Bureau, spoke in support of this bill. **Ms. Gainor** said the mission of Department of Health & Welfare is to promote and protect the health and safety of Idahoans. During the 2006 Legislative Session the Idaho Emergency Medical Services Physician Commission was created. This commission has been working hard to accomplish legislative mandate. This bill builds on the EMS Physician

Commission foundation by transferring some additional specific authority from the state EMS Advisory Committee to the EMS Physician Commission. **Ms. Gainor** also pointed out a few housekeeping items are also solved with this legislation. Both the State EMS Advisory Committee and the EMS Physician Commission are in support of this proposal.

MOTION:

A motion was made by **Senator Werk** to send S 1078 to the floor with a do pass recommendation. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

S 1081

Relating to Public Health Districts - **Senator Hill** explained this bill is asking for an increase of reimbursement rates for members of district boards of health for each day spent in the actual performance of duties from \$50 to \$75. These board members are generally volunteers helping out in their communities. **Senator Hill** said this affects 7 boards and the fiscal impact to each would be approximately \$2,000 per board. The costs will be absorbed into the budget.

Mark Trupp, Teton County Commissioner and Chairman of Eastern Idaho Public Health District spoke in support of S 1081.

Bill Brown, Adams County Commissioner, County and Chairman, Board of Health, Southwest District Health wanted to thank the Committee for their warm welcome. **Mr. Brown** said he is very humble to come here and ask for money on their behalf. As a public servant he never asked what the wages were when he ran for County Commissioner in his own county.

Walt Kirby, Boundary County Commissioner, spoke in support of this bill.

Richard Horne, Eastern Idaho Public Health District, on behalf of all the directors of health departments, said they appreciate this increase.

MOTION:

Vice Chairman Broadsword made a motion to send S 1081 to the floor with a do pass recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

PRESENTATION:

Overview of the Department of Health & Welfare Budget Request for fiscal year 2008 - **David Butler**, Deputy Director of Support Services and Division Administrator of Management Services, gave a high level overview. **Mr. Butler** introduced several administrators, all of whom will make a short presentation and help answer any questions. He went through the appropriations of the various divisions and spoke of the budgeting process. **Mr. Butler** said of his three short years in the government the one thing he has learned is the budgeting cycle for the Department of Health & Welfare is an inverse relationship to that of the state's economy. In bad times suppliers, providers and other business partners tend to raise their prices to generate more revenue. So far, the first seven months of this fiscal year, their caseloads have remained mostly flat. In some areas there has been a slight reduction. This is due to the state's robust economy and full employment.

Chairman Lodge asked each Division Administrator to give a sense of largest challenges and highest budget priority. **Senator Darrington** also asked if there are any budget items in Health & Welfare regarding West Nile Virus.

Jane Smith, Division Administrator for Division of Health in the Department of Health & Welfare, said her top challenges are West Nile Virus and vaccines. She said West Nile Virus is important with 1,004 people affected, 21 of those people died.

Bruce Dunham, Division Administrator of Information Technology, noted challenges are antiquated computer systems. He said there is a lot of pressure to have good tools, information, and data to manage programs efficiently.

Leslie Clement, Division Administrator of Medicaid, explained MMIS is obviously their big budget ticket item. It is essential to how they do business and every service provider or lobbyist you talk to about reimbursement, it's about claim processing and paying for all those services. The longer this system acquisition is delayed the more they will continue to throw money at programming costs for federal mandates. The biggest thing looming ahead is long term care.

Michelle Britton, Administrator for the Division of Family and Community Services, said their biggest challenge is foster care. They continue to see increases in the growth, not necessarily because there are new children entering into care, but because they can't find a way to fine permanency for the children who are in care. They just received three new federal mandates they have to implement this year.

Russ Barron, Administrator for the Division of Welfare, explained their greatest challenges are meeting time limits and accuracy issues relating to program performance. His highest priority as far as budget requests would be the EPICS Replacement. EPICS replacement would help to meet their time limits and accuracy requirements and provide the best customer services they can.

Kathleen Allyn, Division Administrator for Behavioral Health, said their biggest challenge as a new division is to improve services provided, cross-training, and data and information systems.

Chairman Lodge thanked all the administrators for being at the meeting.

PRESENTATION: **Dr. Linda C. Hatzenbuehler**, Chair of Idaho State Planning Council on Mental Health, presented their annual report. **Dr. Hatzenbuehler** noted this Planning Council, appointed in 1980, is the longest standing official group of people who have concerned themselves with the issue of mental health in the State of Idaho. Their mandates (advocacy, planning and monitoring of the public mental health program) are dictated by federal law. Last year they became part of Idaho Code, which expanded their jobs to include agencies cooperating with one another, such as Health and Welfare and Corrections. Their membership also expanded

to include legislative and judicial representation. **Dr. Hatzenbuehler** noted they try to be team players and partnership with various programs that impact families and individuals affected by mental illness. There are many challenges they face. The majority of their publicly funded mental health services in the State of Idaho are really band aide services. There is not a lot of money spent for mental health programing for prevention and early identification as with immunization. Mental illness affects one out of five families.

Senator Werk asked about the Jeff D lawsuit. **Dr. Hatzenbuehler** explained they have been sympathetic with the issue of Jeff D lawsuit and at the same time trying to encourage and work within the system to improve it.

Senator Broadword asked about a statewide suicide prevention plan. **Dr. Hatzenbuehler** said there is a plan organized with an executive director, who reports to them. Progress is being made, she doesn't have the details.

ADJOURNMENT: There being no further business, **Chairman Lodge** adjourned the meeting at 4:47 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Barbara Davidson
Assistant Secretary

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 12, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk and Kelly

MEMBERS ABSENT/ EXCUSED: None.

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

GUESTS: See attached sign-in sheet.

MOTION: **Senator Bair** moved to approve the minutes of January 23, 2007. **Senator Darrington** seconded the motion and motion carried by **voice vote**.

RS 16925 **Senator Stegner** presented the RS pertaining to the findings of Mental Health and Substance Abuse Interim Committee last summer, which report and findings were previously distributed. The committee made a number of recommendations, and he is presenting the recommendations that require legislative action. RS 16925 is a concurrent resolution that deals with an independent contract for the development of an implementation plan for improvements to Idaho's mental health and substance abuse within our system. Of the recommendations that the interim committee made, they wound up with a list of seven major items they thought deserved serious consideration and implementation. They are calling this an implementation plan because the interim committee thinks that these are all solid areas of the development for improved mental health and substance abuse system. This concurrent resolution asks for an independent study to develop an implementation plan for the consideration of these seven major items. **Senator Stegner** notes that he has reviewed the seven major items with this Committee before. It does ask for an appropriation of \$250,000 for that purpose, and expects this to be done within a year. JFAC is anticipated to have a fairly significant role in overseeing this effort, and this is probably one of the most significant recommendations from the interim committee. **Chairman Lodge** noted this item is the number 8 recommendation from the Mental Health & Substance Abuse Interim Committee.

Senator Kelly confirms this is a concurrent resolution which will go through the Senate, but asked if there will be a separate appropriation bill that goes along with it. **Senator Stegner** stated this is not an unusual format. The concurrent resolution will become a finding in the Legislature, and it would be noted by JFAC as an earmark; they would identify it as a

finding of the Legislature recognizing a fiscal impact and it would become part of an appropriation bill hopefully sometime later this session. It is conceivable that JFAC could turn down and ignore the recommendation of the Legislature, but **Senator Stegner** has yet in his experience to see that happen with any significance. If this concurrent resolution is passed by the Legislature, JFAC will take appropriate action. They have identified the fiscal note.

MOTION:

Senator Broadsword moved to send RS 16925 to print. The motion was seconded by **Senator Werk**. **Senator Darrington** asked if it was **Chairman Lodge's** intent to call this resolution back into committee, or if it was the Chairman's intent that this go straight to the floor. **Senator Stegner** believes this could be argued on the floor adequately, and would be happy to come back to the Committee and go over it in more detail.

Chairman Lodge stated that **Senator Darrington** had spoken before many different groups in the Legislature to explain the Committee's report. **Senator Stegner** has made presentations to a number of groups including the Legislative Council and leadership and the House side. **Chairman Lodge** called for a **voice vote** and the motion carried.

RS 16941C1

Senator Stegner presented RS 16941C1 pertaining to the Juvenile Corrections Act. This is one of two sentencing alternatives that would broaden the authority of judges to order substance abuse treatment instead of incarceration. This is the one dealing with juvenile corrections. It adds a new paragraph in the sentencing chapter of the Juvenile Corrections Act that allows judges to consider sentencing and treatment options at the county level. It has been reviewed by the office of the Supreme Court. It is the result of recommendations that the interim committee heard from local judges about effective ways to deal with some of the substance abuse issues that they have coming before them. This one specifically does not address mental health as juvenile mental health is another section code, but does deal primarily with sentencing options for juveniles. **Senator Bair** stated he has not seen this report. He questioned if youth juveniles are violent, will they be mandatorily be sent to prison, or if they have a substance abuse problem, would they send violent members to a drug rehabilitation. **Senator Stegner** replied this report is based on the court and the people that service the court with judicial information about the rehabilitation capability of that individual and a decision would be made on a case-by-case basis, allowing the judge to address some of those issues. There are parameters and a lot of recommendations from experts. The intent is not to release violent youths back into society, but it is based on the realization that possibly incarceration might not be the best alternative and there are more cost-effective options in a community-based setting. The availability of that service within a community would be part of the decision making of a judge. It does place more responsibility on the judge, but in the manner of having drug courts be overseers of that treatment program. **Chairman Lodge** noted this is a print hearing so this may not come back to Committee.

MOTION:

Senator Coiner moved that RS 16941C1 be passed. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

RS 16969C1

Senator Stegner noted that RS 16969C1 deals with the previous topic although pertains to adults, and is broader to include the ordering of mental health examinations. This RS was drafted with the assistance of the court system, and comes as a recommendation from judges across the state asking for the authority for alternative sentencing options, particularly as they deal with substance abuse and mental health. It lays out the guidelines either for people convicted of a felony or that have violated conditions of their probation. Rather than immediate incarceration, this allows judges to order assessments both for substance abuse or mental health examination or substance abuse examinations, and based on those assessments and other input, they can order treatment, rather than incarceration.

MOTION:

Senator Hammond, recognizing that this probably will end up in another committee and to stress the merits of it, moves to print RS 16969C1. **Second** by **Senator McGee**. The motion carried by **voice vote**.

RS 16926

Senator Stegner presented this concurrent resolution dealing with our recommendation to all state agencies that they collaborate and develop and adopt standard statewide assessment tools for both substance abuse and mental health. This again is a recommendation from the Mental Health subcommittee and is a constant theme of meetings over the summer about the need for uniform assessment tools that will transfer easily between the different state agencies trying to deal with the problems. Even without this concurrent resolution, the State is already trying to do this. State agencies were trying to accomplish this before the interim committee adjourned last November. They worked on this for the past few months and **Senator Stegner** heard from the drug czar of the State of Idaho that we are extremely close to accomplishing this today. With any luck at all we will actually have this in place before we adjourn this year. This resolution is a recommendation and calls for a report to be delivered to the Health Care Task Force by July 1, 2008. It is important to ensure that the state agencies involved understand that we still have an interest in this legislation.

MOTION:

Senator Broadsword moves to send RS 16926 to the Senate floor to print. Seconded by **Senator Werk**, and carried by **voice vote**.

RS 16938

Senator Stegner presented an expansion and broadening of the rather successful regional mental health grants that we have established over the last couple of years. Two years ago we established this grant program and asked that regions submit proposals for grant rewards and concentrated the first year (two years ago) on ACT teams and awarded several ACT team physicians statewide based on this grant request and proposal. Last year they expanded the grant to include things other than ACT teams and concentrated on additional psych beds in regions, but primarily on transitional housing. They received an appropriation from JFAC for \$2 million and awarded those grants late last fall across the state in a number of different very innovative programs. The whole purpose of the grant program is to develop local and regional leadership in areas of mental health, to allow local committees and regional committees to develop priorities, identify local assets within their communities and have some input in the direction that their mental health

delivery system might take. It has been a successful program. It is back again this year expanding program one more time to allow the grant proposals to expand over multiple agencies and to have the awards graded by multiple agencies. Lines 25 and 26 show that the Grant Program Advisory Group include the Dept. Of Corrections, the Dept. Of Juvenile Corrections courts and the regional mental health courts. Also broadening the scope that they might ask for grants to include crisis intervention teams and specifically in lines 30-33 asking the grant be broadened to include multiple-agency, multi-year programs. This is designed specifically to accommodate a request made to this grant proposal from Region VII that has a very innovative alternative sentencing program underway that they already found some money for. It involves a very broad group of judges, prosecutors, state legislators, the Regional Mental Health Board, a lot of Health and Welfare officials in that area, that have gotten together and developed what they hope will be a model for alternative sentencing options that involve transitional housing, work release programs on a local basis, and a lot of support. It is a very innovative program that we are not awarding grant money to, but are broadening it to allow them to apply for multiple ongoing appropriations that they will be asking for in this legislation through JFAC appropriation process. It does not appropriate the money, but would be recognized with an earmark from JFAC if it were to pass both bodies of the Legislature.

The target in this program in Region VII is to keep people from being sent to Idaho correctional institutions and instead have them treated for substance abuse and mental health in their own communities. This might be the model program that could be duplicated across the state, and if successful we could potentially keep from having to build correction facilities.

MOTION: **Senator Werk** moved that RS 16938 be sent to print, and seconded by **Senator Bair**. The motion carried by a **voice vote**.

RS 17008 **Senator Stegner** stated this legislation deals with the development of a psychiatry residency program within the state. There are residency programs for other medical doctor physicians in the state, but there is not one for psychiatry. The state desperately needs more psychiatrists. Some of the general information about the shortage of mental health professionals in the state is listed in the concurrent resolution, and asks for state participation in an effort that is underway already for the development of a psych residency program for the state. The State of Idaho is getting by rather cheaply on this; being led by the Veterans Affairs Medical Center (the VA) and St. Luke's and St. Al's here in the valley; they have each pledged to try to get this program started. They are asking the State for a minimal amount of assistance. They have pledged 90 percent of the costs and our cost would only be 10 percent. The estimates of the costs are listed on the fiscal note for the first five years. The program would ramp up slowly and this concurrent resolution would be earmarked by JFAC for funding if it passed both bodies. It could make a world of difference in eventually increasing the number of mental health professionals in the State.

MOTION: **Senator Coiner** moved RS 17008 to print, and seconded by **Senator**

Broadsword that RS 17008 be printed. It is **Senator Coiner's** intent that this concurrent resolution go directly to the floor. **Senator Broadsword** presented this proposal to the Mental Health Interim Committee; she believes this is a really good proposal and should be supported. The motion carried by a **voice vote**.

RS 16831C1

Roy Eiguren is an attorney and lobbyist based in Boise. For this legislation he is representing U.S. Ecology Corporation of Idaho, which is a waste facility located in Owhyee County, and CH2M Hill-Washington Group International joint venture that is the environmental remediation contractor at the National Laboratory. This bill is being sponsored by his two clients, along with **Director Hardesty** of the Dept. Of Environmental Quality. We are essentially regulated by a number of federal and state laws. As a part of the ongoing review of those laws, the Dept. agreed that there are three things needed to be dealt with, and are dealt with in this particular legislation. The first is that the State's radiation control statute was enacted in 1967 that is obsolete and no longer has any legal effect because the program delegated by the Nuclear Regulatory Commission of the State of Idaho was returned by Governor Andrus to the NRC in 1991. There is no federal authority delegated to the state by that statute. Secondly, we have a PCB waste disposal statute on the books enacted by the Legislature in 1986, shortly after the enactment of the Hazardous Waste Management Act. The PCB Act has never been used because there has never been the ability for the federal government to delegate authority to the State to administer a PCB waste disposal program. Finally, as reviewed various statutes, the Dept. realized that there was never codification into Idaho Code of the oversight in monitoring functions the State has relative to the National Laboratory. This particular legislation corrects that. On page 1 of the RS on line 37, reflects that the Dept. is in the process of reorganizing and there is a position now known as an INL coordinator. There is also an inclusion of a deputy director, which is a position previously not established at the Dept. Those various positions listed in that part of the Code are the nonclassified employees that are exempt from civil service provisions of Idaho Code. Page 3 of the RS line 53 through line 19 page 4. That is part of this legislation in terms of what it adds to code. This language crafted by the Dept. provides for the administration and operation of the INL oversight and monitoring function. When the Legislature adopted the recession law in 1989, the policy of the State to have an oversight program. That was never put in the statute so consequently from 1989 to the present the oversight program currently administered by the Dept. of Environmental Quality has no statutory or legal sanction. This would rectify that. The other key change on page 5 of the bill, lines 47-48, is simply language that repeals the Idaho Radiation Control statute. The balance of the changes that are contained in the RS simply are changes to form the deletion of the radiation control statute. The other sections of the Code would refer back to it. The only other substantive change is found on page 13 of the bill beginning on line 40, there is a repealer there for Idaho Code Section 67-806 that refers to the chapter of the Code that deals with the Governor of Idaho. There is antiquated, obsolete language contained in 67-806 that requires the Governor provide a report to the 1990 session of the Legislature on INL oversight, and that deletes that. Also 67-806(a), the

so-called "INL settlement fund" that was put on the books for the purpose of allowing Governor Batt's 1995 settlement agreement with the Dept. of Energy over certain matters that the National Laboratory. It was a mechanism to receive the funding that came from the federal government to the state for certain aspects related to that settlement. **Senators Darrington** and **Kelly** have indicated their willingness to co-sponsor this legislation. They talked to outside groups that would have an interest in the Snake River Alliance and the Idaho Conservation League can speak for themselves, but did share this language with them in advance. It also comes with full support of the Office of the Governor.

MOTION: **Senator McGee** moved to print RS 16831C1, seconded by **Senator Werk**. The motion was carried by **voice vote**.

RS 16933 **Ken McClure**, attorney and lobbyist with Givens Pursley in Boise, representing the Center for Behavioral Health. **Mr. McClure** said this is a simple bill to fix the problem that there are no narcotic treatment facilities in Idaho. The closest facilities to Idaho available for Idaho residents who need narcotics addiction treatment are in Spokane, Ontario and Salt Lake City. The reason there are none in Idaho is we have a statute making it non-economical to operate one of these facilities, but also which makes it cumbersome to operate one of these facilities. Someone who is an addict of opiates: heroin, prescription drugs (Percodan, OxyContin, etc.); those people go to a treatment facility, see a doctor, get a diagnosis and prescription for an alternative drug – sometimes methadone or alternative drug, which is then prescribed to them so they can take that drug instead of the drug to which they are addicted. Averts addiction to drug addicted to in approximately 80 percent of the cases. We need to have this capability in Idaho, we ought to have it more than one place conveniently located for Idaho residents. The prescribing statutes contained in the Controlled Substances Act, which this bill would amend, indicate that the actual delivery of the dose of medicine has to be performed either by a physician or a nurse practitioner or physician's assistant, which is a waste of highly-trained physicians' time and talents. This was discussed with Board of Pharmacy, Board of Nursing, Health & Welfare, etc. This will allow the dispensing to occur by means which allow handing the cup to the patient. It is important because these people are addicted to drugs, sometimes illegal street drugs, or illegally-obtained prescription drug, they have to actually go to the facility on a daily basis and get their daily dose. We should not have to pay to have a doctor sit there to hand out a daily dose to a patient. This allows a nurse to do it. It's an oversight in the existing law, but it's an oversight significant enough that has prevented these centers from being located in Idaho. **Mr. McClure** is not aware of opposition and the language has been signed off on by everyone potentially interested in the issue.

MOTION: **Senator Broadword** moved that RS 16933 be sent to print, seconded by **Senator Werk**. The motion carried by **voice vote**.

RS 16879 **Senator Keough** presented legislation relating to midwifery. The purpose of this bill is to establish a framework for voluntary licensure of midwives in Idaho. The Idaho Midwifery Council has been meeting for a few years and are interested in putting together a voluntary framework.

They are not interested in a mandatory framework, but they do want to advance their profession and some opportunities to enhance maternity care options for Idaho's families. This bill sets out the structure for putting together voluntary licensure program and the components of enforcement actions and other details at the Bureau of Occupational Licenses.

Senator Keough hoped that Committee would print the bill and when it comes back for hearing the members of the Midwifery Council could speak as could the other co-sponsors on this piece of legislation.

MOTION: **Senator Hammond** moved to print RS 16879, second by **Senator Broadsword**. The motion carried by **voice vote**.

RS 16943 **Senator Werk** said RS 16943 deals with direct-to-consumer advertising of pharmaceuticals. He would ask the Committee to print the memorial and bring it back to the Committee for a full hearing. Direct-to-consumer pharmaceutical advertising represents about \$4.2 billion with the costs of the health care industry currently as of 2006. There have been a lot of issues identified with direct-to-consumer advertising; can certainly encourage Congress to enhance the good aspects and decrease some of the bad aspects. The memorial outlines a few of the issues and requests that Congress exercise more oversight and provide the FDA with the ability to provide more oversight over pharmaceuticals.

MOTION: **Senator Coiner** moved to print RS 16943, seconded by **Senator Kelly**. The motion carried by **voice vote**.

RS 17012 **Elizabeth Criner**, on behalf of Pfizer, said this is an Idaho Wholesale Drug Distribution Act. Since about the year 2000 there has been an increasing number of counterfeit medicines that have worked their way into the consumer market. Most have entered through wholesale transfer process. Legislation will limit the opportunity to introduce counterfeit drugs into the U.S. market by that process. This will be accomplished by three main components: tightens the rules around the licensing process for prescription drug wholesalers, established pedigree requirements to ensure the authenticity of prescription drugs within the distribution system and will establish penalties for violators. This legislation is a model that has been worked on over the past 18 months, has been passed or implemented in 23 other states and is currently being considered in about 20 more states. The goal is to implement in all 50 states and folks from PhARMA, our industry, Pfizer and others have been working together with the federal government on this issue because it has both state and national implications. **Senator Hammond** asked for clarification on enforcement fiscal impact to the state. **Ms. Criner** replied that it can be handled through licensure fees. Some states have had concerns that there would be increased requests for licenses and in fact there's been a decrease. There's a subgroup of wholesalers; the top three that handle about 90 percent of the drugs and then there is a growing number of tertiary group, about 15 regionals and about 6,000 tertiary wholesalers, and it is among that group there has been a dramatic dropoff in licensure in other states. They have looked at experience in states like Colorado and others to try to find some similar models that didn't have a fiscal impact, either handled through license fees within the state or the

National Association of Boards of Pharmacy has established a nationwide verification group and in some states the boards of pharmacy have put the licensure requirement with bond. **Senator Werk** inquired about penalty section, strange construct of *a person shall be imprisoned for any term of years*; thought unusual from what he's seen in Idaho Code to have such broad language in terms of sentencing.

MOTION: **Senator Hammond** moved to print RS 17012, seconded by **Senator Broadsword**. The motion carried by **voice vote**.

RS 16989 **Senator Corder** said this is something new to Idaho. It differs from the previous legislation regarding mental health and substance abuse, the Mental Health Care Task Force and Mental Health subcommittee; all of those are different, with different functions and purposes. Eventually we will narrow those down to one group from the Legislature that is focused upon all of these problems. Right now Idaho is catching up, but we are still well behind where we should be with mental health and substance abuse and in this catchup phase, yet another place where we are very deficient. A variation of this was presented two years ago, called community resource workers, but community resource workers had begun with a grant from the federal government and then that federal money went away and some school districts continued that program. So other districts went without, they did not have the resources to keep the program going within their schools and the high schools fell well short. High schools did not have those people trained to recognize and to handle the problems associated with teens and high schools. We all recognize the rise in suicide rates among our teenagers, we recognize the advance of substance abuse among our teenagers and recognize how devastating that is in the long term when our young people have problems that they are not able to participate in society. What this legislation attempts to do is first of all define what we are asking this program to encompass; it defines teens at risk on page 3. We have not had that definition before and we need it to understand what that is. Page 4 gets to important outcomes. This program calls for a pilot project, anticipated to last three years. It is expensive at \$330,000 a year for each of those three years. But what we will get out of that is four trained clinicians – people who are trained to recognize those symptoms of suicide, trained to help teenagers through crises, and trained to recognize symptoms of substance abuse and mental illness and which one of those occurred first, and at what stage these young people are and how they might prevent that switchover from substance abuse to mental illness, and in some cases help them get by. As they do this, they are going to coordinate with some of the other agencies we have; these people will be hired by the Dept. of Health & Welfare, be contracted to the school districts. The Dept. of Health & Welfare will make the determination of which of the rural school districts will have one of these four trained physicians. They will also be able to assist the drug court, they will be able to assist the health courts, they will work with each and all of the other agencies to accomplish their purpose (found on page 4, lines 33-43). One of the really important things of our test project is the kind of data with the project the way it was designed. If it was not designed appropriately, how might we change that program to be successful. This pilot project calls for that data to be collected by our universities and colleges, and at the

end of that pilot period give the data to the Dept. of Health & Welfare who will in turn present that to us, so that we might make an informed decision about the early teen intervention specialists. Page 4, lines 33 on, what are the outcomes we expect. We want to know the impacts on the number and nature of the teen arrests, we want to know the reductions in the number of teen suicides and suicide attempts; we want to see the changes in patterns of teen incarceration or involvement with Idaho's juvenile or justice system. We want to see the impacts on local caseloads of practitioners in the Dept. of Health & Welfare, and we want to see impacts on juvenile and mental health or drug courts. We want to see changes in academic achievement. We want to see changes in the number and nature of student disciplinary actions. Those are admirable goals, and if we were to achieve them then the program would be a success. But just in four places will not do it; that is not sufficient. A test project is the most intelligent way that we can begin to understand this problem among our teens.

MOTION: **Senator Werk** moved to print RS 16989, seconded by **Senator Broadsword**. The motion carried by **voice vote**.

ADJOURN: **Chairman Lodge** adjourned the meeting at 4:23 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 13, 2007
- TIME:** 3:00 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Bair, Werk, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senators McGee, Hammond and Coiner will arrive shortly.
- CONVENED:** **Chairman Lodge** called the meeting to order at 3:04 p.m.
- GUESTS:** See attached sign-in sheet.
- PRESENTATION:** **Toni Hardesty**, Director, Idaho Dept. of Environmental Quality, gave a brief update on Mercury Monitoring Activities conducted in the agency for the past year. **Senator Coiner** also requested that EPA briefly update on their activities related to mercury monitoring. The goals of the agency are to gauge extent of mercury problems in our state and to identify where we might have mercury hot spots (areas where there may be elevated mercury level in a water body). Also to complete mercury "total maximum daily loads" (TMDL), which are water quality analyses done when there is a known water pollution issue. They write a plan in order to determine how to get that water quality back within standards. Specifically for the Salmon Falls Reservoir and the Jordan Creek area, which we know those water bodies exceed the mercury standards for the state. Mercury is a concern because it is toxic to humans, especially pregnant women and children. The primary route of exposure is diet: fish eat other fish, then humans eat fish, which is the main concern with mercury. These sources of mercury can be natural, or they can be man-made. Page 2 of the chart shows different kinds of monitoring taking place and the locations. Results for 2006: Salmon Falls Reservoir, an area focused on last year as seeing high numbers, both in fish consumption advisory and our water sampling. Also did some air monitoring. Completed water quality monitoring there, did a second round of fish sampling and a second round of snow sampling. In the fish sampling what we found are that Walleye exceeded the water quality standards and the other fish that we sampled were Kokanee; they happened to be below the water quality standards. Those familiar with fish consumption advisories, when they go to a water body and do sampling of fish, if the fish are above the standards they submit those sample results to a committee. That committee is made up of Fish & Game, the Dept. of Health & Welfare, DEQ, and if those fish are determined to be above the level of water quality standards and fish consumption advisory, we then post that water body. Put a posting there indicating that consumer may want to limit consumption of fish from this

particular area. Again we're not saying don't eat the fish, but we are saying there are some fish, usually based on size and type of fish, that may want to temper consumption of that, particularly if in high risk group. Salmon Falls Reservoir Mercury TMDL Monitoring – completed wet and dry air deposition monitoring. One of the questions always get is where is the mercury coming from, and so air quality sampling is designed to take a look at that to identify the sources that might be contributing to that. Have some national background sources, but monitoring data does seem to indicate that we are certainly getting some spikes, so we are seeing some regional sources. The data is not conclusive enough to tell us exactly where that is coming from, but clearly know that in the Salmon Falls area on the air monitoring we do see some spikes. Averaged out over an annual year, there's nothing there to indicate level is extremely high, but again we know we do have some influences. Jordan Creek Mercury Monitoring – fish, water and sediment monitoring was completed. What they have found there is this is an area where some traditional placer mining occurred way back when and we suspect that the mercury contamination we are seeing there is from those historical practices. Brownlee Reservoir Tributary – they have done mercury monitoring in the water there and what they have found is that the Owhyee River has the highest value. Jordan Creek actually flows into the Owhyee so they are looking at that pretty closely. They also did some monitoring of the Boise River and the Salmon River. Brownlee and Lake Lowell Fish Tissue Sampling – in Brownlee what they found was Bass exceeded the DEQ water quality standards and Suckers were below that. In Lake Lowell they sampled Catfish and Suckers, and found that both exceeded the DEQ water quality standards. They also sampled Bass and Bluegill at Brownlee and both of those species were below the water quality standards. One of the issues that was raised last year with regard to the request that the agency do more aggressive monitoring and sampling and get out there and do as many rivers and areas as possibly can, the *Large River Fish Tissue Sampling* on page 10 is a result of that. They sampled nine different rivers, 13 different sites of those, and processed over 210 fish for analysis. Additionally they contracted with USGS and had them sample at seven different rivers. What they found are the following areas exceeded water quality standards for fish tissue numbers; everything else was below. What exceeded were Suckers on the Snake near Shelley, Suckers on the Salmon near Pasimori, the Northern Pike Minnow on the Salmon near the North Fork, and then again Brown Trout at the Portneuf. Everything else came back in within the normal range. As far as the plans for 2007, going to do a statewide survey of fish tissue in lakes and reservoirs so continue that effort to sample more lakes and reservoirs throughout the state. Have established a background monitor – that was again something that the State didn't really have. Most states in the nation have a background monitor where they believe that the air monitor is not influenced by any regional sources so you can truly determine what your background is for the state. Idaho did not have one of those; they now have one at the Craters of the Moon that was funded and paid for by the first year by SEMPRA, who was looking to build a coal-fired power plant. They went ahead and continued with that commitment to continue that funding for one year to establish the Craters of the Moon, even though they are not building that facility. After the one year the DEQ will

need to take over the cost of that and that will be about \$15,000 a year to continue to run that. It's a very important piece of data, something again that the State did not have. The last thing is an MOU, a Memorandum of Agreement, with Nevada EPA Regions 9 and 10. When here last year, they talked about the fact that there are very large gold mines in northern Nevada that use a unique process specific to them, whereby they roast the ore in order to get at the gold and as a result of that, release fairly large quantities of mercury into the environment. The question has been, how much of that might make it into Idaho and whether that was an influencing factor in some of the numbers they are seeing. They have done some studies and analysis and the date is not conclusive at this point in time. What this MOU would get at (it has yet to be drafted) would be sharing of data and information, something that EPA Region 10 is looking at and something that EPA Region 9 is looking at in Nevada. They certainly don't want to be duplicating efforts; need to make sure everybody is using their money wisely, so talking about how they can share and collaborate on information there so that they can be using our resources wisely. That is an update on the progress that they have made in 2006 on mercury monitoring. **Senator Coiner** inquired on snow sampling findings. **Ms. Hardesty** replied what they found with the snow samples is that they were inconclusive. It did not appear that they were seeing any trends associated with the snow samples. They were at or near background and there was really no difference between Mores Creek and the Pomerelle Ski Resort. **Senator Coiner** inquired about the core sampling around the reservoir to try to get a baseline there. **Ms. Hardesty** responded that the USGS sampler didn't feel like it was good sample so they went back and did again; what is shown is a consistent volume of mercury in the core sample over time. Did not see any spikes, did not see anything other than just a consistent level of mercury in those core sample. **Senator Coiner** inquired about the cement plants in Oregon to the west, and then the eastern lakes and reservoirs, what is the plan to monitor those. **Ms. Hardesty** replied that with the cement plant to the west is something that is being looked at, and have talked to Oregon about that and Oregon is looking very closely at that particular area. They will continue the sampling as far as the greater picture in looking at 2007. Again, with limited resources, trying to get to the whole state is a matter of time. **Senator Bair** asked how they measure toxicity in humans; is it parts per million, and at what level does Mercury become toxic to humans? **Ms. Hardesty** responds that they do not measure Mercury, per se, in humans. Through study and analysis they have determined based on how much fish they believe people eat and the concentration of fish. As to what is sort of an acceptable level or whereby at a level greater than that you might want to be concerned and reduce fish consumption; that's how they look at it with regard to fish. **Senator Bair** asked how they measure the level of toxicity in fish. **Ms. Hardesty** stated that what they do is collect fish, then put the fish in a blender, puree the fish into very small pieces, and then they do the sampling and analysis based on that to look at what they call the fish tissue levels; the amount of the Mercury in the fish. Once they get that evaluation, they compare to what they determined the criteria is. For instance, our fish tissue criteria is .3 milligrams per kilogram. Some of the fish that have been seen at the ranges for instance at Brownlee, the Bass were .63, Suckers were .29. At

Lake Lowell Catfish were .45. So that kind of gives you an idea of the range they have seen in the kind of fish. The Northern Pike Minnow, which was on the Salmon River near the North Fork was 1.11. Again, what you typically see is as the fish get bigger, they are older, so oftentimes they see the concentrations increase in larger fish and in fish who consume other fish. **Chairman Lodge** asked about the people fishing at Lake Lowell; there are a lot of Suckers, Bass and Catfish. Regarding the .45 on the Catfish at Lake Lowell – when will be posting that to say people should not be eating the fish from there. **Ms. Hardesty** responded she is not sure what the timing is; those data were just presented. It will go to the “FCAG” committee – the fish consumption advisory group – all of the technical representatives from each of the agencies look at the sample results to ensure that they all concur. The Dept. of Health & Welfare at that point in time takes the responsibility for posting of different water bodies. She can certainly get back to us on the timing associated with when those data will be considered by the committee and what the timing of the posting will be. **Senator McGee** inquired if an immediate announcement needs to be made on something like this, recognizes that it needs to go through a committee process, but is this at a level where some sort of immediate announcement needs to be made. **Ms. Hardesty** stated that they try to do this as properly as possible. If you look at the numbers on Catfish it's .45, it is not significantly over that level of what they post for people; it is not necessarily to tell them not to eat fish, they tell people may want to moderate their consumption of fish. **Chairman Lodge** asked what would be considered the dangerous level. **Ms. Hardesty** stated it is based on the consumption of fish, so that's really where they target for people, is based on how many fish they are going to consume. Since fish is a healthy part of the diet they don't want to tell people not to eat it. Certainly if you are pregnant you are going to want to reduce your consumption greater than someone who is not in that particular case. With children, obviously they are more susceptible so you would reduce their consumption rates if you have a Mercury issue. That would be more necessary than somebody else who is not as sensitive. **Chairman Lodge** said she can see where that would be a big issue with Lake Lowell, as there are so many people that fish out there. There's a population that might not get that information that does fish there a lot, so that would be a concern. **Senator Darrington** stated he has a lot of questions, but he will discuss with **Ms. Hardesty** later rather than take committee time, but had one question: At the time that they went into the Superfund of the 1980's the concern was Mercury. Is there any way to compare the tests that are run today on fish and water and compare them to what was found in the soils in the Silver Valley and compared to apples and oranges, but expects that nothing has been found that would equal the toxicity of the top levels of soil within the box in the Superfund site. **Ms. Hardesty** commented that it was lead levels that they are concerned about in the Silver Valley; the toxic entity that they are cleaning up for in the Silver Valley is lead. **Senator Darrington** stated that he knows lead was a big concern, but there was also a lot of discussion about Mercury at that time. Recalled that at one of the several meetings regarding the Superfund cleanup, Mercury was a consideration. He will discuss with **Ms. Hardesty** at a later time. **Chairman Lodge** thanked **Director Hardesty** for the

presentation.

PRESENTATION: **Jim Werntz**, EPA Director for Idaho based in Idaho. His name and contact information is on the attached handout. **Ms. Hardesty** touched on a number of issues in this outline, and he will discuss the Mercury contamination issue, not just in Idaho but nationwide. First of all the primary focus that they have taken in Idaho is to the extent that Mercury is affecting Idaho's waters and fisheries and focused on minimizing the public health impacts as **Ms. Hardesty** discussed with the fish advisories the state does, then finally looking on trying to identify the origins of the Mercury that is being found in fish and in the water. What he has done is break down last year's activities and what they are planning to do this year. **Ms. Hardesty** already discussed the Salmon Gulch Creek Reservoir and the Jordan Creek Fork, which EPA has provided technical and financial support to. They also secured the use of a Tekran monitor, which is a fairly expensive piece of technology from their San Francisco office that was used last summer for simultaneous monitoring at two sites in Idaho. Also in discussions with the Shoshone-Bannock Tribes and Duck Valley Tribe regarding the issues on their lands as well. The significant research effort (RARE) is a research grant developed last year and were successful in getting a proposal considered by the national office to fund additional monitoring for Salmon Falls Reservoir. The focus of that, in addition to doing monitoring, is to get a better grasp on the particulate emissions and what the fingerprint origins are or the airborne emissions that are affecting the area. Fingerprint origins are getting where that Mercury is from: is it from a local source, a regional source, and if it is from a local source can they tell what it is from; is it from a gold mine roasting, is it from mining underground, etc. There is a summary of some of the financial report the EPA has provided to this issue in his report. On the 2007 Ongoing and Planned Activities, they stepped up a fair amount of their investment as everyone in state has become more aware and more concerned about this issue. Starting with last year they started some of the work; they are going to start to see some actual data and results from that. Should have results on the Tekran air monitoring by this spring that should be helpful. The modeling that Washington State University is its regional modeling, it looked at air for contaminants in the air; it did not look at Mercury originally. They have now included that in the modeling. It's a predictive model and that should help provide a better idea of the daily deposition in some parts of the Northwest. That model is supposed to be coming online sometime this summer. The REMSAD model is a national model that EPA headquarters has developed and essentially what it is supposed to do is allow a user to on a watershed basis identify the most significant sources of contamination to that watershed, airborne or in the water. That could be a very useful tool as well. The RARE project he previously discussed. They got peer review comments on that proposal. The number of the comments said you may not be able to answer the questions you are trying to answer without additional leverage and additional funding, so they are looking at trying to get additional resources to try to modify that project. Thinks it is going to be very informative if able to conduct it. They will probably give permission to use in the next 1-2 years. The MOU concept is a regional issue and there seems to be significant contamination in the Great Basin,

so will be participating in that with our sister regions. I know that **Senator Coiner** in particular has asked him and others on several occasions that given the knowledge that fair amount of the Mercury air deposition is coming from Asia and overseas; there is a global pool. How is the researching progressing and identifying how much of our Mercury is coming from the global pool versus local and regional sources. He cannot answer that question but Dr. Dan Jaffe at the University of Washington is doing a tremendous amount of research on that but at this point they are not able to say how much in a particular region in Idaho. **Senator Coiner** inquired if this is the work being done on the Peninsula background coming in on the states. **Mr. Werntz** is not that familiar with the research, but it's funded by EPA National and the National Park Service and NOA and it is specific coastal research and believes they are also doing some fairly high elevation monitoring on Mt. Bachelor. But in his research there is not yet conclusive, but it is a very well-funded effort and will probably be yielding some more data on what percentage is coming from Asia and North America. **Senator Coiner** states that one of the things they worked on last year is cooperation, because this thing crosses several agencies, and wondering how those efforts are going between Health & Welfare, DEQ, EPA – are they all on the same page and working collaboratively? **Director Hardesty** replied that internally within the state they are working closely with their partner agencies. One of the components of moving forward is this MOU. There are a number of players in this. Clearly they worked with EPA Region 10 over this past year. They have provided a number of sources to us in addition to being peer review and providing technical expertise. A key component is getting Region 9 in Nevada to the table as well because there is a lot of research and information going on down there; they clearly would like to be able to share in that information and understand that. That's the next significant step. There's been a question out there as to whether Utah and EPA Region 8, would like to get involved because Utah is certainly concerned about this issue as well. It could be an even bigger group of people sharing in this information. **Senator Coiner** thanked **Director Hardesty**. **Senator Kelly** understands there are funding and mechanical issues on the ground, but are they further along than they were. One of the whole reasons they started looking at this last year because it was somewhat alarming to us on these issues. Are we further along and are the results that you have seen encouraging or discouraging. **Director Hardesty** replied that they are certainly further along than they were last year with regard to two areas in particular: one with characterization of this issue in the state. Obviously as they sample more water bodies they get a better feel of how big this issue is versus how small it is. When they started this thought it could be a fairly isolated southern Idaho issue, since that's where they were getting the data. Clearly as they expand that monitoring they're getting a different perception related to that. Secondly, their staff have come a long way with their understanding of the problem. This has historically been seen as an east coast problem, so staff on the west coast are generally not just Idaho but Utah and other states really haven't spent a whole lot of time related to work-related issues because it really wasn't on the west coast. So there's been a learning curve the staff had to come up with regard to that. They are not at the point to conclusively say here's the issues and here's where it's coming from.

They have some data that creates an inconclusive picture as to where the sources are coming from. That's why some of the data and research with the fingerprinting and the RARE proposal are critical components that need to happen before they can create a full picture of what they have in the state. **Chairman Lodge** thanked **James Werntz** for the presentation.

PRESENTATION: **Dr. Mary Perrien** and **Brent Rienke**. **Brent Rienke**, Director of Department of Corrections. They will be having in the next two weeks three different presentations on the Senate side. This is the first of those three presentations. Today they are focusing on mental health. He will also be meeting with the Education Committee on the Senate side, as well as Senate Judiciary & Rules Committee for a full briefing on what is happening in Corrections today. Has three handouts: (1) a proposal to Governor Otter; (2) Idaho Department of Correction Briefing Sheet, and (3) deals with presentation on Dr. Perrien's presentation on mental health. The first document deals with the Idaho Criminal Justice Commission. Last year they came before the Committee and talked about briefly what was happening within the area of the Criminal Justice division and I just wanted to show you the document they presented to Governor Otter. When they went in for their interviews, he asked them for the three points they wanted to be measured on about mid-point this year. These are the three points they are looking at from the Criminal Justice Commission standpoint. To refresh the Committee's meeting, the Criminal Justice Commission is 24 individuals that have been appointed to that Commission by the Governor and they are looking at developing and working with the criminal justice system overall in the State of Idaho. Three areas in the center of the page dated February 1, 2007 to Governor Otter.

- Development of alternatives to incarceration (includes jails and prisons) for juveniles and adults.
- Implementation of the Adam Walsh Act and full review of Idaho's sex offender registry. Next session the Committee is going to be receiving legislation from the Dept. of Corrections and the Criminal Justice Commission dealing with the Adam Walsh Act that was signed in July of 2006.
- Development of evidence-based programs in the management of incarcerated adults and juveniles

Those are the three areas they will be reporting back to the Committee in the 2008 session as to what's happening within these three focus areas before the Criminal Justice Commission. There will be some significant changes on how the State of Idaho deals with sex offenders. These are issues the Legislature will be hearing about during the offseason, as well as when it returns to Boise. On the Idaho Department of Correction Briefing Sheet, the majority of what they have on the back side of this page **Dr. Perrien** will cover, but he wants to call the Committee's attention to one of the challenges in Idaho when they talk about corrections. John Maxwell has a quote in one of his recent books that says, "Where there is no hope in the future there is no power in the present." They have reached a kind of critical mass point with Corrections in Idaho, and he is really excited to be a part of it right now. Thinks they are going to be able to affect some real positive change as they work together and develop some of the same types of partnerships on the adult side that they have

been successful with on the juvenile side throughout the state, in the cities and the counties are bringing folks to the table. One of the things that has happened in Idaho in the west in the way that they approach issues, is that they tend to be black hat agencies and white hat agencies. During our budget presentation before the Joint Finance & Appropriations Committee they gave both chairs a black cowboy hat, and asked him to please come on board and help us solve some of these challenges. They have an insatiable appetite for the State's budget. There is no question that the needs are very significant, and yet he thinks together they can accomplish a tremendous amount. One of the challenges that they have and the key issue is that in Idaho today, for every 36 adults males, they are managing one out of 36. They either have one out of 36 in prison or on probation and parole. It is a significant number. If you couple all the adult men and women in that picture, it's one in 57 across the state. There are some tremendous challenges with that; you can see the prison growth challenges there – they grew by 450 inmates this past fiscal year. In community corrections they grew by 971 inmates they are managing in communities across the state. They now are involved with just over 19,000 individuals across the State of Idaho; hence the 1 in 36. So growth is a significant challenge and they will be reporting back to Committee in future. Would like to discuss mental health; that really is pertinent to this particular committee; working with Health & Welfare and the relationship they have with the Dept. of Health & Welfare, so would like to introduce **Dr. Mary Perrien**. She has prepared a presentation that will generate a lot of questions. **Chairman Lodge** thanked **Brent Rienke** and **Dr. Mary Perrien** for being here.

PRESENTATION: **Dr. Mary Perrien** stated she is here to talk specifically about mental health care in their facilities. She would like to paint a picture for the Committee as to how they end up with mentally ill offenders in our system and explain where they are and where they hope to be. The first pathway into their system is one she finds most tragic. All of the time she spends talking with families of offenders who came to us through this pathway. One of the reasons she finds it more tragic pathway is because it frequently begins in childhood. It's a pathway that is impacted by many things, including the capacity that they have in our communities to provide service. What happens, and she's been told this repeatedly by usually parents who are very hopeless and frustrated and come to her to try to get some answers. They identify that there's something going on with their child, he's behaving in an unusual way, so they start to seek out assistance. What they describe to her is they go from agency to agency trying to find service and experience frustration at having to go from entity to entity and also feeling like they're not getting the kind of care that they would like for their child. What happens is at some point that child decompensates and reaches a point of crisis. The good news of crisis is that now that child meets criteria for service. So the service is aimed at improving functioning. When service is successful the kind of negative outcome is that child may no longer meet criteria for service. So the parents go back into this cycle, searching again for services, trying to find out how they can maintain that level of functioning. Again, the child goes into a period of decompensation and is engaged in this continual cyclical process. If you look at the graphic representation, what you will notice is

that on those areas of improved functioning, the child is never reaching that original baseline. What research tells us is with the number of mental illnesses, each time a person decompensates and gets to that point of crisis, they never get back up to that original baseline. So our objective is really to try to prevent the decompensation so that they can try to maintain that baseline functioning. What these parents have told me is that throughout the process they have been advised by various individuals to bring law enforcement into the picture; that is the way to get service for your child, whether it's a minor or a grown child. Parents by the time they have come to her, have done that; their child is part of the system and now they are frustrated because they believe their child is still not getting the kind of care they had originally hoped for, and is not in the kind of living situation they believe their child should be in, and you can't pull them out. There is a false end to this cycle; once they see them there are still periods of decompensation and trying to get people to return to a higher level of functioning. There are other ways that end up with mentally ill offenders. There are individuals whom by just the mere fact of being incarcerated precipitates a psychological crisis. So you may have someone sort of holding it together in the community, maybe not very well, but managed somehow to pull it off. Now they've removed their supports, take them away from kids and spouses, and precipitate an episode of major mental illness. They may have someone, for example, who had a major depressive episode out of the community, was treated very well and successfully, has functioned well without medication, but upon incarceration, with all the stress that go along with that, experiences major mental illness.

This last class of individual is the one that people usually think of. People who are in corrections tend to think that inmates are faking. They come to them, they are faking, they want comfort and they want drugs. They do have some of those. Those individuals tend to be what they call access to or personality disorder. Those are not people they typically classify as having a serious mental illness if all they have is that personality disorder. However, those individuals can still have a major mental illness. They may have both. They may be very unpleasant to be around and have a major mental illness. They have a constitutional obligation to provide for that major mental illness.

They have had a lot of challenges in the past in the DOC. First, there was no conceptualization of what their constitutional mandates were. Primarily at a treatment provider level. People did not understand what it was they needed to do. In addition, they did not have a requirement for licensed staff. Most of staff were unlicensed. This is contrary to the standard of care for correctional mental health. Correctional mental health is very different from community mental health, so you really need sort of a structure to guide you; kind of like a map that they would all use to get to a goal. They need their clinicians to have that same thing to determine who is standing in front of them, does this person really have a mental illness or not, and then what do they do to treat that individual in a correctional setting. They also do not have a good classification system. They are going to see over the next couple of years some changes in their numbers, and it's not because their numbers were wrong. It's

because the classification system was not very good. They cast a very broad net and included things they were not constitutionally required to treat. They should see the numbers go down a little, as they have a much finer classification now. In addition, they did not have a comprehensive system for guiding this kind of care. Basically, clinicians were out at the facilities doing their own thing, and they hired people who did not typically have correctional experience. They did not do treatment planning. This is extremely contrary to the standard of care. They had people who were receiving care without an individualized treatment plan. There was a lack of training. The agency as a whole did not have a real good handle on what the mental health practitioners needed, where they needed to be at, and so they couldn't provide that kind of training or really determine what sort of training would be appropriate for clinical staff. There was no supervisory position. There was no one to provide clinical supervision to the clinicians to say they were out of bounds or back them up with security staff if that was what needed to happen. All those things together, all the agency was doing basically was all crisis management; running from one fire to another. They didn't really have any concerted plan in place to deal with it. The actual therapeutic services that were provided were very minimal once they went outside of crisis management. So the noisiest inmates got the greatest amount of care whether it was indicated or not. That is for both adjudicated and non-adjudicated. The result is basically a medication management system. What case law tells us, is that medication alone does not meet our constitutional mandate. That is not sufficient to protect us in terms of future litigation.

Finally, there was kind of a lack of understanding within the organization as to how mental health fit into the overall organization as a whole. **Dr. Perrien** said they have a much better understanding of their constitutional mandates today. She will not say that every one of their staff members has that framework in his or her head, but she will say that their treatment providers understand. They know what they are obligated to provide. All of their new hires must be licensed; they only hire licensed staff. They now have a comprehensive correctional mental health services system. It is not fully implemented yet, but the key elements of that system have been implemented. They are still in the process of training all staff. Her dream for the future is that one day that system will be in everybody's head. That you can walk up to a Correction's Officer and a Correction's Officer can tell you everything about that system. Treatment planning happens now. Inmates have treatment plans in accordance with a standard of care. They have a nice tight system of classification that also allows them better communication with the Dept. of Health & Welfare as to whether their inmate would meet their criteria for services outside of their institutions. What this allows them to do is also allocate their limited resources based on the functional level of the inmate, so those inmates with greatest need get greatest resources. They have ongoing training for staff, which is very important, particularly when hiring people without a correctional background. It's important that they understand the type of person who is going through the door and be able to figure out just who it is standing there and what they need to do to provide adequate service for that person. They are able to hold them accountable to that standard. There's a greater understanding of the role of mental health within the

system overall, and they have increased services to all offenders.

But there are still needs they have and continue to have challenges. They have a need for sheltered living. What she means by this is when you look at case law, it is clear that there is recognition that there will be inmates who are mentally ill. Basically your higher-functioning, more criminally-minded inmates will take advantage and will harm those lower-functioning inmates. They have an obligation to provide safe housing for them, that's what she means by sheltered living. They are currently looking at whether they can provide this with their existing resources. While they may be able to provide a housing situation, they cannot with their current resources provide for the service need that goes along with that.

They have very limited services at this point still, and they need to expand those services to meet the level of need that they find within our population. There are experts in the area who believe there should be inpatient services available for adjudicated offenders for inmates. They have a statute on the books that allows the DOC to place adjudicated offenders with Health & Welfare if a process is worked out. There is also a statute on the books that allows Health & Welfare to place nonadjudicated, dangerously mentally ill individuals with the DOC. Right now they have one unit in their maximum security institution, 12 beds, whether they house both of those groups together. The Dept. of Health & Welfare recognize that this is not an ideal situation. They would like to improve that for both of those populations. They hope to have full licensure of all mental health staff. At this time they still have three staff who are not licensed. They want to improve their assessment capabilities so that they have a very good idea of who is standing in front of them, and then they can communicate that information to the parole board, and make it a better pathway for that individual to get back out into the community and get the appropriate services when he or she is discharged.

Dr. Perrien said they need to improve facilities for suicide watch. When their institutions were built they were not generally built with the idea that someone would be on a suicide watch and need placement. They have areas they have to use to keep people safe that are not ideal clinically, and are very bothersome to them, so they are hoping to change that sometime in the future. They would also like to integrate mental health and substance abuse services within their agency. Similar to across the state and the nation, they tend to run two parallel tracks. There are mental health services and substance abuse services and the people operate in different universes. What research shows is when you integrate those fully that's when you have the best outcome for this very difficult population. Finally, one day she would like every staff member to fully understand their constitutional mandate and his or her role, because every staff member, whether a CO or a secretary, has a role in fulfilling that mandate.

In conclusion, **Dr. Perrien** wants to say most importantly that they have made significant improvements in the delivery of mental health care within

the Department of Corrections. They do still have some continuing challenges; one of the greatest is meeting the need of the most acute adjudicated offenders, and in those nonadjudicated dangerously mentally ill offenders. She also wants the Committee to know that she has some very committed dedicated mental health staff in her facilities who come in every day and do a very difficult job with a very difficult population and do this state a wonderful service. **Senator Darrington** stated that his attitude on crime is relatively well known. He does not think we should say that one out of 36 Idaho males are in the Department of Corrections. He thinks we should say that one out of 36 Idaho males are violating the criminal laws of the State of Idaho and deserve to be in prison or on probation or parole. **Senator Darrington** asked if the mental illness, the mental health problems, result in the crime being committed, or does the crime being committed cause the mental illness? **Dr. Perrien** replied that what they know about mental illness is that when it is untreated, people do not behave in the norm. They come to our attention because they look weird or they violate a law. Possibly had they been treated for mental illness sufficiently in the beginning they would not have to put them into the criminal justice system; they might have never known about them. But there are people who are criminals, and that's the lifestyle for whatever reason they have chosen for themselves. And they need to face the consequences of their actions. Once they come to the DOC, they have a constitutional mandate to provide care for them if they meet the criteria that the Eighth Amendment basically sets forth. But she would not say that crime causes the mental illness; but they may be criminal and they may still have a major mental illness. **Senator Darrington** stated two examples: he knows two kids raised in his community. Both of them went off to Vietnam, both of them perfectly normal kids, and both of them came back heavily hooked on dope and both died tragic deaths as a result of mental illness. **Senator Darrington** asked if in **Dr. Perrien's** opinion can illegal dope use cause mental illness, or is there another root cause that isn't the case. **Dr. Perrien** replied there are a couple of different ways that substances work within the brain. One can mimic a mental illness, for example, amphetamine use; particularly when you really like your amphetamines, you can look like you have a major mental illness, like you're bipolar. If you're using a lot you will have psychotic-type episodes and you will appear psychotic. Once those substances are removed from your system, you're okay again, when it's just substance abuse. There are individuals who for whatever reason are vulnerable. They have a genetic predisposition, their wiring is crossed up, that when you introduce those substances – now they have a mental illness. You remove the substances, the mental illness is still there. So for them this stress, the precipitant, was that substance that they put into themselves. **Senator Broadsword** inquired about self-medicating; people who are prone to mental illness anyway and they are not getting the drugs they need so they're either out drinking or out doing illegal drugs to try to feel better; in what percentage of cases could that be addressed earlier and stop that person from actually ending up in the system. **Dr. Perrien** said that is challenging. She went to training last week where they talked about this issue, and it's somewhat controversial, the idea of self-medicating. In her personal opinion, if you look at our society, what she sees is that if people are feeling blue, can just take this pill. Cited the

“Where does depression hurt?” commercial, and pill taking. We have very much become a society where in her opinion we seem to think that life isn’t difficult, and that we should kind of feel good all the time, and that we should take a pill, and so culturally we have encouraged people to take outside substances, whether they’re prescription or not, to feel better. **Dr. Perrien** believes that we have to start way back with the pharmaceutical companies; we really have to look at how are we preparing our children, how are we preparing people, and the idea of resilience, that we develop internal resilience and strategies and try to avoid looking outside of ourselves for something to fill that hole. **Senator Werk** clarified the role of direct-to-consumer advertising of pharmaceutical agents telling people that they don’t need to be resilient, they can be cured of all ills with any pill; whether skipping through the fields because your allergies are gone, or feeling blue today, take Paxil. **Dr. Perrien** clarified is that there are people who are experiencing major mental illness that research has shown medication helps. Medication in combination with specific types of therapy help really well. We need to pursue those things for the people who need them, but we need to be aware of our threshold – what is our tolerance level for discomfort and what is our acceptance level for finding outside factors that make us feel better. **Senator Lodge** thanked **Dr. Perrien** and **Director Rienke** for their presentations and stated that we will be facing several different changes in our mental health system in the next few years.

Senator Bair inquired about the connection between Health & Welfare, where they could come and help with the DOC patients and some of the DOC patients could go to Health & Welfare for help. **Dr. Perrien** stated there are two statutes on the books, one that allows DOC to place people with Health & Welfare; another that allows Health & Welfare to place people with DOC. That’s the way that the funnel or the pipeline is currently working most frequently. Generally what happens is an individual is identified as incompetent to stand trial, and through that process they are determined, whether it’s in conjunction with Health & Welfare or a designated examiner, they are found to be dangerously mentally ill and not suitable for a state hospital, so the case is referred to them. They review that case and look to see if it meets their criteria, and the director according to statute of the DOC makes the ultimate determination for admission or exclusion and so they currently have three individuals under that statute who are placed with them and in maximum security institution.

Senator Broadsword asked if the Governor was receptive to her suggestion for a comprehensive criminal justice system analysis. **Director Rienke** replied that there was definite interest, and they have also made some comments to the co-chairs of JFAC and they are waiting to see what happens in the budget-setting process. That is something they hope to engage in with the criminal justice commission.

S 1090

Steve Tobiason is here as counsel for the Board of Dentistry for the State of Idaho. In the work he does with the Board of Dentistry, one of the things they get are legal questions, and this one came from Executive Director Mike Sheeley. He asked the question, “Does the dental code

currently restrict the type of business operation a licensed dentist can conduct business under?" Our short answer is yes, it does. Unfortunately, the way it restricts it could be very punitive to a licensed dentist, because in the bill under Section 54-924, the caption of that section notes "Other grounds of refusal, revocation or suspension of dentists – probation agreements." As you read through that section what you will see is the Board could and is authorized by that section to actually take disciplinary action against a licensed dentist for conducting business in some form other than a sole proprietorship or professional corporation. From the Board's point of view when discussed, this made no sense to them, it seemed rather illogical because of today's commerce in Idaho you can form LLC's, you can form professional liability corporations, you can form and do business in a number of different organizations. In answer to the first question from Mr. Sheeley what they did then was to prepare legislation to make it clear that the dentist is not limited in the choice of business formation, whether a dentist wants to be sole proprietorship, whether a dentist wants to be a corporation, whether a dentist wants to be a limited liability company, whether a dentist wants to be a professional partnership; those choices are open. But the other question that came up is this part of the code under the practice of dentistry that the Board oversees – is it consistent with the other parts of the Code in this area. The answer to that question is not it is not consistent. Because in other parts of the Code, particularly the Idaho Professional Service Corporation Act requires that the ownership be held by the licensees. So in terms of responding to both those questions, making sure that from the Board's perspective, this statute authorizes a dentist to select any business formation they want to, that's why they have added the language in there that talks about the Idaho Business Corporation Act, Limited Partnership Act, Limited Liability Company Act; those things that are contained in subsection 2 and again in subsection 3. The language at the end of subsection 3 which talks about "no person who is not duly licensed shall have an ownership interest;" that is to be consistent with the other sections of the Code. They are required that licensees are the owners of these kind of businesses and that is done to protect ultimately the consumers to make sure that the people making and controlling those business and treatment decisions, particularly those treatment decisions, are the licensees themselves. If there's a problem, the Board of Dentistry will come back to that licensee. They will not look to another person who is a non-licensee. The Board only has jurisdiction over that licensee and that licensee is responsible for all those treatment decisions, so they have to maintain that level of control in ownership. That brief explanation of the reasons behind the bill, and certainly urges the Committee to vote a do pass recommendation. **Senator Coiner** stated he is having difficulty with the language starting at line 34 that "no person who is not duly licensed to practice dentistry in this state shall have an ownership interest in any business entity engaged in the practice of dentistry in the state." No person sounds too final; if three dentists have a partnership and one dies and his wife has an interest coming in that. What happens to her interest in that? **Mr. Tobiason** addressed the question. First of all, going to the key phrases in that sentence is "engaged in the practice of dentistry." No person that is not duly licensed shall have an ownership

interest in any business engaged in the practice of dentistry.” When you look at that, under 54-901, it defines what the practice of dentistry is, and what that talks about is conduct involving examination, conduct involved in training, conduct involving administering anesthetics. So from that standpoint you could have a situation and it’s possible, it would be up to the dentist, to create one entity that might own certain assets of that business. In other words, the building, things that don’t by themselves constitute the practice of dentistry as that’s defined in 901. There could be a separation there. In terms of the issue of if a dentist dies, his surviving spouse won’t have any interest. In Idaho, what he foresees would happen most of the time in that situation is that matter would go into a probate court and would be probated. The first thing that is done when that happens is a personal representative is appointed. I practice in that area and my understanding that at the time of death, there isn’t necessarily a transfer of interest. There is an estate of that person. The interest will remain in the estate of that person until it completes the probate process. So by the nature of the probate process it would give the surviving spouse time to liquidate or sell or transfer whatever interest through the personal representative. It is similar to a non-licensed spouse of a surgeon, obviously the non-licensed spouse cannot go in and direct surgery or those kind of issues. It is the same way here. **Senator Coiner** said he does not expect the wife to go in and practice dentistry. What he is seeing here is an ongoing business then suddenly you have it stated in law that no person can be a part of that business. If he owns a service station that doesn’t mean he’s going to go out and pump gas every day, or some other business that requires a license – the person who is going to be doing the service has the license, but that doesn’t mean that somebody that doesn’t have that can’t own a part of that business. Is this anywhere in the law before this Senate Bill 1090? **Mr. Tobiason** responded that yes, it is in the law when you look at the provisions under the Professional Service Corporation Act in the Idaho Code today. It says that all ownership interests must be held by the licensees that particular business is conducting. If it’s a group of doctors, they all have to be licensed doctors. If it’s a group of dentists, they all have to be licensed dentists. If it’s a group of attorneys, they all have to be licensed attorneys. That is in the Code today that the ownership interest must rest with the licensees. I think potentially what can happen is this can be legally somewhat confusing when you equate community property interest with what we’re talking about here, and they actually are separate issues. We’re talking about day-to-day ownership here and in the other section of Code it’s the ability to make the day-to-day decisions to control how treatment gets delivered to decide potentially at what point you are no longer going to service that patient. And the concern is that what non-licensees make it strictly from a business decision and not a professional practice decision. In terms of the spouse and the husband, there is a community there. If there’s a divorce or a death, what is done is there’s a value put on that community for that estate and that spouse gets one-half of that value if it’s community property. The difficult part from a legal point of view is trying to explain they don’t run down the same track, they are somewhat parallel tracks when you talk about community property, spousal interest versus what we’re talking about here in terms of the ownership. They did research on the community property part of this;

they went through the Supreme Court cases in Idaho. This does not cut off that spouse in this draft; the community property interest remains.

Senator Darrington followed up on **Senator Coiner's** question. Do the public courts recognize blue sky, the value of blue sky. Do they recognize blue sky in such instances? **Mr. Tobiason** responded that the duty typically of a personal representative is if they are in a fiduciary position they have to get the best value for whatever that asset is. Part of that asset, if it has blue sky in terms of if you're talking goodwill or the value of the business that way, you have a built-up clientele, existing clients, they would recognize that and expect if there's a value there for that the asset of the sale or transfer of the asset would be handled that way and would probably be valued that way in terms of determining the overall value of the estate. **Senator Darrington** stated that what **Senator Coiner** is getting at, is upon the death of the practicing spouse, does the blue sky automatically lose its value because the surviving spouse have no way to capitalize on the value of the blue sky of the deceased spouse. **Mr. Tobiason** stated that it doesn't necessarily evaporate at the end, it goes into the issue of looking at that existing practice; how many clients are there, what kind of practice was it, to another dentist coming out of law school, they may be willing to pay more than just the value of the interest. **Senator Werk** asked if someone wants to have a ten percent interest in the business, but you have controlling dentist as the licensee; what he reads is that nobody could have any interest that isn't a licensee. What he thinks **Mr. Tobiason** is getting at is that he wants the licensee to have control over the practice, so the licensee is not being dictated to by somebody other than the licensee about how they practice, where the files are, things like that. He asked for specification of prohibition of having any ownership interest in a practice that isn't from a licensee, using physicians as an example. **Mr. Tobiason** responded that as they looked at this they initially looked at the Professional Service Corporation. In that code that's already existing, and that came much after the Business Corporation Act, it's designed to address professionals, and it talks about requiring that the licensees hold the ownership interest. That requires that the licensees are the owners of the business, whether it's 10 percent, whether it's 40 percent, that there is no question that the only motivation there will be for any decisions made in that organization, will be based upon the licensees and their responsibilities in terms of treatment. **Senator Broadsword** asked if what **Mr. Tobiason** is saying that as long as someone doesn't own a majority of the interest in the company, 51% or more, then someone who is not a licensee could have business interest in this business. **Mr. Tobiason** answered that as it says in the language, there can be no ownership interest, period, by a non-licensee. **Senator Broadsword** asked where ownership interest is defined. **Mr. Tobiason** responded that in this context you can't go to the Board of Dentistry to list a definition, but typically what happens when you use terms of common vernacular, the court will look at one or two places, Webster's or Black's Law Dictionary and say this is a term of common usage or common meaning; and apply a common definition. They will look at what ownership means and what interest means. The chances are they'd probably just look at Black's Law Dictionary for that. **Senator Darrington** stated that his interpretation of what all this language really does is put in

the Dental Practices Act a clarification which is already in Idaho Code and that effect which is exactly the same. He asked if that was correct. **Mr. Tobiason** responded yes, but in terms of the issue discussed here on ownership and such, in terms of the other forms of doing business, that is nowhere else in this Code. **Senator Darrington** clarified that in effect a clarification of what is already in Idaho Code; it puts it in the Dental Practices Act. **Mr. Tobiason** responded yes, and it is under the Idaho Professional Service Corporation. **Senator Werk** stated that he looked up the Professional Service Corporations Act, and just for the Committee's edification that except as provided in 30-1309(a) which has to do with death, "the person who is not licensed or otherwise legally authorized to practice the profession or one of the professions for which the practice of which a professional corporation is organized, may be a shareholder in the corporation." **Senator Werk** stated he thinks **Mr. Tobiason** is affirming that if you are not part of the profession, you can't be a shareholder in that corporation. **Mr. Tobiason** responded that is correct, and there is also some additional language if he could read. **Mr. Tobiason** read 53-615, and said that was the language when he answered **Senator Darrington's** question that they are trying to make sure this section is consistent by saying you need to be licensed to have that ownership interest. **Mike Sheeley**, Executive Director of the Board of Dentistry, stated that the Board of Dentistry is not attempting to restrict ownership in the big picture dental practice. A separate corporation can own the building, the dirt, the dental equipment. What the board wants is the dentist to own the patients and the files; no more no less. When you're talking about ownership interest in the dental practice and can someone else own something? Sure; people are as creative as state law allows them to be. You can have a separate corporation own the building, you can have a separate corporation own the equipment, but the dentist needs to own the patients. What happens in practice when they've seen this repeatedly throughout the state, is that the ownership shifts; suddenly the dentists are calling them saying the front office people cancelled my ongoing patients because they hadn't paid their bill. That is abandonment of patients. The dentist can't do that himself, and suddenly the front office people are doing it. People can get creative and own as much of a dental practice they want to; outside people, non-dentists. But when it comes to those patients and those patient files, the dentist has to own those and has to make treatment decisions. That is consistent with all medical professions.

Roy Eiguren, lawyer and lobbyist representing Small Smiles Dental Clinics of Idaho. Several members of the Committee have been to the Small Smiles Dental Clinic here, and he knows questions have been raised in the past about the ownership of that. The way it works is there an Idaho-licensed dentist that, as **Mr. Sheeley** pointed out, essentially owns the client base. That dentist enters into a management services agreement with Small Smiles Corporation, which operates in 38 different states, that provides management services to the dentist. As a result of that, individual investors have the opportunity to participate in the Small Smiles Corporation.

MOTION: A motion was made by **Senator Broadsword** to send **S 1090** to the floor

with a do pass recommendation. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

S 1091

Steve Tobiason, stated that **S 1091** is a bill designed to define “conviction” in the general definitions of the Dental Act. The reason for that is, as it states in the RS, they had a recent case involving a dentist who was found guilty of committing a sexual crime against a child, a minor, and was a licensed practicing dentist at the time. The board felt it was appropriate to take disciplinary action against that dentist, and in the process of doing so had a ruling that was contrary to what the board believed was their interpretation of the statute and that was because the dentist had received a withheld judgment, the hearing officer found that not to be a conviction. They checked a number of other statutes in the Idaho Code on this definition and there are many other licensing boards that incorporate that within the definition. What is proposed in this bill is simply that the front end provide a clear definition of what conviction is, and then on the second page, under 54-923, to remove some of the language discussing supplying a certified copy of the judgment of conviction because a judgment of conviction can be worded in criminal law and there may be other ways to sentence somebody. The Board wants to make sure that it can take disciplinary action in these kind of cases where it is appropriate. **Senator Werk** stated that he has not seen this language. Are we defining a conviction as a forfeiture of bail bond or collateral deposited to secure a defendant’s appearance? If he skipped town on a hearing or missed a hearing and the bond is revoked, then are you considering that to be a conviction? **Mr. Tobiason** stated not in that context, but potentially in the context where it normally occurs, which can be a misdemeanor through the resolution of the case by that process, which involves forfeiture of bond. This same language is found in the Code under the Idaho Outfitters and Guides Act, which is found in the Fish & Game section under 36-15-11. In the Idaho Outfitters and Guides at 36-21-13, that language is used in other sections of the Code with that same language that you referred to. **Senator Werk** clarified that this language applies to misdemeanors, but not to felonies? **Mr. Tobiason** clarified that under Section 923 it applies to felonies and misdemeanors. That’s existing in the statute, that’s nothing that they are adding. In terms of can the word conviction apply to a misdemeanor – yes it can, under the terms of what would be a misdemeanor of moral turpitude. In terms of the practice of criminal law, you can resolve cases by the forfeiture of a bond or collateral that’s been deposited on misdemeanors. You cannot do that on a felony. He has never in his experience as a prosecutor, ever seen a felony result on that basis. **Senator Werk** asked if he were the criminal defendant and he missed or skipped town on a criminal proceeding, would that be a forfeiture of the bail bond, or is forfeiture specific to the agreement that you are talking about. **Mr. Tobiason** responded that in terms of resolving a misdemeanor case to forfeit a bond or bail bond in this context there’s a misdemeanor rule that deals with the forfeiture of bonds. Typically what happens in a misdemeanor case, there is some kind of agreement and there’s been a bond put up, maybe \$500, \$800, and they say okay just forfeit the bond and they won’t prosecute the case. In terms of surety bonds; that’s a different category of bail bonds. A surety bond is one that is hosted by a bail bond company. With that type

of bond if there is a non-appearance then there's an entry of forfeiture of that bond and 90 days later if the person has not been brought back into court then that company has to pay that bond. **Senator Werk** asked about the forfeiture of a bail bond or collateral deposit to secure defendant's appearance in this context can apply to either a misdemeanor or a felony. It is not limited to the misdemeanor case that you discussed; this applies to both. **Mr. Tobiason** responded that it is his understanding and interpretation about how that applies, since felony cases don't get resolved by simply forfeiting a bond, he does not see that happening. He does see that quite often in misdemeanors. His view or interpretation of this as applied to a misdemeanor in cases involving moral turpitude.

MOTION:

A motion was made by **Senator McGee** to move **S 1091** to the Senate floor with a do pass recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

S 1092

Mike Sheeley. S 1092 really is the outgrowth of earlier legislation that passed a couple years ago that allowed retired dentists to serve in a volunteer capacity and continue to practice the industry for public or charitable purposes. In the subsequent intervening two years the dental hygienists have come to the Board and have indicated or expressed an interest in also participating in that statute so **S 1092** is simply an attempt at adding the dental hygienists to the volunteer statute, meaning that a retired dental hygienist who still wanted to practice in a charitable capacity could come to the Board of Dentistry and absolutely free of charge obtain a volunteer license and do that to their hearts' content. He does not want to belabor this but he did have a question at the prior hearing on this. A person that would qualify for a volunteer dental hygienist license or a volunteer dentist license would not be a person that could actively practice dentistry like a normal dentist would be, because they no longer qualify to do that. He believes **Senator Kelly** asked him before if a dental hygienist that got a volunteer license do the restorative that was contained in a rule and previously approved. They could not, because they do not qualify for an active license, which you have to have. But they certainly could practice dental hygiene in a volunteer setting. **Chairman Lodge** asked if they would be able to practice in a school clinic. **Mr. Sheeley** responded they certainly would. That is one of the settings that is clearly envisioned by the term that they call extended access oral health care, which are primarily public charitable and hospital nursing home type settings. Certainly settings that you don't typically see, but dentists or dental hygienists perhaps see. **Senator Broadsword** asked if current licensees are protected when they do volunteer work from civil action the same way volunteers licensees are. **Mr. Sheeley** replied that obviously the volunteer provision has specific immunity for anything up to negligence; there is no provision like that for dentists or dental hygienists who actively practice in the state. The standard of care is a malpractice standard and that's really kind of a question of law based on their level of expertise, the community they practice in and how they hold themselves to the public. There's no grant of immunity to dentists or dental hygienists as a general rule in the state law. That was really included in this volunteer statute to encourage people to do it because retired dentists and dental hygienists no longer carry malpractice insurance.

MOTION: A motion was made by **Senator Coiner** to pass **S 1092** to the floor with a do pass. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

Chairman Lodge stated we will hold **S 1093** until early next week, and she needs a sponsor for **S 1091**. **Senator Bair** will sponsor **S 1091**, **Senator Broadsword** will sponsor **S 1090** and **Senator McGee** will sponsor **S 1092**. **Chairman Lodge** thanked everyone for their time. There will be no meeting on Thursday, February 15, 2007.

ADJOURN: **Chairman Lodge** adjourned the meeting at 4:45 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 14, 2007

TIME: 3:05 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See an attached sign-in sheet.

CONVENE: **Chairman Lodge** convened the meeting at 3:05 p.m.

PRESENTATIONS: **Ms. Tammy Payne**, Faith Liaison of Healthy Families in Nampa, gave the Committee a presentation on making a difference through community relationships. **Ms. Payne** reviewed the programs offered and planned through the Healthy Families organization and how they use available funds to expand the programs and make them available to people who need help.

Ms. Payne introduced **Mr. Keith Thompson**, Director of Reforms Unanimous (RU), who reviewed other information and programs related to the work being done for families through the RU organization.

Chairman Lodge introduced **Ms. Donna Shines**, Executive Director, of The Mentoring Network, a not-for-profit organization offering services to several school districts in Canyon County. Participants link with a student for one hour a week to share school work, recreation interests, reading, and sports activities.

The Mentoring Network has developed partnerships with several school districts and assign quality individuals to spend quality time with students who may not have any other positive time with adults. Many times just one hour a week can make a difference in the life of a child and the entire family. Sometimes their parents are on parole or are incarcerated. **Senator McGee** complimented **Ms. Shines** on the contribution this organization makes to the community and on the fact that the children who have mentors seldom have any connection with the Juvenile Justice System. **Ms. Shines'** background in Special Education provides an excellent basis for encouraging the volunteers in this program.

Chairman Lodge thanked **Ms. Payne**, **Mr. Thompson**, and **Ms. Shines** for being committed to these programs and for their presentations.

PRESENTATION: **Chairman Lodge** introduced **Mr. Russell Duke**, District Director, Central District Health Department (CDHD), who gave an overview of health districts, what they do and their relationship with Health & Welfare. Their focus has been prevention, health protection and protecting our environment. Local health districts offer family planning, immunization, food protection, tobacco prevention, and public health preparedness.

In 2006 the Women, Infants and Children program contributed over \$20 million directly to Idaho's local economy through supplemental food vouchers and 420,000 client encounters. Immunization clinics, family planning, and inspections at licensed food establishments are also provided. Health districts employ professionals including nurses, environmental health specialists, nutritionists, health educators, and dental hygienists.

The four sources of revenue are contracts, fees and other revenue, State General Fund and County contribution, as well as \$500,000 from the Millenium Fund for the Tobacco Prevention and Cessation Programs.

Topics of special interest and presenting particular challenges are West Nile Virus and Mental Health and Substance Abuse. **Mr. Duke** closed with the statement that public health is all about prevention and the good outcomes of their work is often invisible.

Committee members discussed with **Mr. Duke** tactics for prevention of the spread of West Nile Virus through the distribution of the publication entitled "Fight the Bite", as well as other materials and communications with the Department of Agriculture regarding animal health issues. **Senator Werk** asked if there is anything going on behind the scenes to help coordinate some kind of effort to be more proactive in the coming season to prevent the spread of this virus. **Mr. Duke** replied that health districts work within their own counties on ground spraying and tracking issues, and that he is not aware of any coordinated effort in effect at this time.

Mr. Duke introduced his associates from other central district health locations. **Chairman Lodge** thanked **Mr. Duke** for the presentation and information regarding West Nile Virus.

S 1096: Relating to Public Health

Vice Chairman Broadsword presented the rationale for **S 1096** which allows for inspection and licensing of food establishments. The legislation continues the \$65 annual license fee and allows the Districts to deposit those fees directly into their accounts. Elimination of the Food Safety Fund will streamline the process for collecting and utilizing fees and save approximately \$6,000 per year.

TESTIMONY: **Mr. Richard Horne**, Director of Eastern Idaho Public Health, spoke in favor of **S 1096**, citing the success of the partnerships with the food industry. Questions from the Committee followed regarding permits and

inspections.

Mr. Fred Lawson, County Commissioner on the Central District Health Board, spoke in favor of **S 1096**.

Vice Chairman Broadsword provided statistical information in support of this legislation.

MOTION: **Senator Bair** moved to send **S 1096** to the Senate floor with a do pass recommendation. **Senator Werk** seconded, and the motion passed by unanimous **voice vote**.

S 1102: Relating to the Long-Term Care Partnership Program

Mr. Robert Aldridge, Attorney, Trust and Estate Professionals of Idaho, Inc., gave the rationale for **S 1102**. He stated that this legislation brings the statute in compliance with the Federal statute and allows them to proceed with negotiated rule making in this area. **Mr. Aldridge** clarified a question from **Vice Chairman Broadsword** regarding the long-term care benefits and personal assets.

A representative from the Bureau of Financial Operations spoke about the process in place for payments of long-term care benefits. They are coordinating that information with the Attorney General's Office.

Senator Darrington asked him for clarification about the payment of benefits and asset protection for heirs of the estate as it affects eligibility for Medicaid.

MOTION: **Senator Hammond** moved to send **S 1102** to the Senate floor with a do pass recommendation. **Senator McGee** seconded, and the motion passed by unanimous **voice vote**.

S 1103: Relating to Public Assistance Law

Mr. Aldridge presented the rationale for **S 1103**, which brings Idaho law into compliance with the federal Medicaid law and with the provisions of the Deficit Reduction Act. This area will be the subject of continued negotiated rule making.

Senator Darrington asked **Mr. Aldridge** to clarify prior legislation and the effect on the 2006 legislation for rules relating to eligibility for Medicaid. **Mr. Aldridge** also provided clarification on the rules for **Senator Werk** and **Vice Chairman Broadsword**. In response to a question from **Senator Hammond**, **Mr. Aldridge** explained how assets can be sheltered.

MOTION: **Senator McGee** moved to send **S 1103** to the Senate floor with a do pass recommendation. **Vice Chairman Broadsword** asked if there would be any testimony against **S 1103**. There being none, **Senator Darrington** seconded, and the motion passed by unanimous **voice vote**.

PRESENTATION: **Chairman Lodge** introduced **Ms. Kathie Garrett**, representing the

Council on Suicide Prevention. The Committee heard **Ms. Garrett's** presentation of the Annual Report relating to the Idaho Suicide Prevention Plan. The Plan was developed in 2003 and presented a foundation to coordinate an effort to prevent suicide in Idaho. **Governors Kempthorne** and **Risch** both recognized this issue through an Executive Order to establish the Idaho Council on Suicide Prevention. The Council was directed to oversee the implementation of the Idaho Suicide Prevention Plan to ensure the continued groundwork of the plan, to be a promoter of suicide prevention in Idaho, and to prepare an annual report on the plan's implementation for presentation to the legislature.

The Council is collecting information now on what is being done across Idaho to implement the Plan and increase awareness of these tragedies.

Ms. Garrett introduced her associates, who have been instrumental in developing this plan. **Chairman Lodge** thanked **Ms. Garrett** and her associates for their presentation.

Ms. Garrett responded to questions by explaining what information would be available in the coming year and which groups the information would pertain to. There are opportunities for training and getting information out to help recognize when people are developing problems and training to give them adequate resources to carry on.

PRESENTATION: **Chairman Lodge** recognized the Committee's Page, Payton, on his last day with a gift and letters of recommendation provided by members of the Committee. Payton shared his plans for next year and ambitions to further his education. He thanked the Committee for the experience, and **Chairman Lodge** expressed appreciation for all his help.

ADJOURNMENT: **Chairman Lodge** adjourned the meeting at 4:43 p.m.

Senator Patti Anne Lodge,
Chairman

Joy Dombrowski,
Secretary

Sandra Boyington,
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 19, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See an attached sign-in sheet.

CONVENE: **Chairman Lodge** convened the meeting at 3:05 p.m.

MOTION: **Vice Chairman Broadsword** moved to approve the minutes of January 24, 2007. **Senator Bair** seconded, and the motion passed by unanimous **voice vote**.

S 1158: Relating to Care for the Medically Indigent

TESTIMONY: **Mr. Alex LaBeau**, President of Idaho Association of Commerce and Industry (IACI), presented the rationale for **S 1158**. This legislation makes an employer who employs a person who is not a citizen of the United States, and is aware that such person may not legally work in the United States, responsible for the cost of providing medically necessary health care for that person for all occupational injuries and diseases that arise out of the course and scope of that person's employment with the employer. **Mr. LaBeau** continued the discussion and answered questions from Committee members. After several questions, **Senator Jorgenson**, one of the sponsors of the legislation, was called to the podium for further clarification of technicalities in this legislation.

MOTION: **Senator Coiner** moved to keep **S 1158** in committee. **Senator Bair** seconded the motion. A discussion followed.

SUBSTITUTE MOTION: **Senator Darrington** made a substitute motion that **S 1158** remain in Committee until a certain date to review any additional information. **Vice Chairman Broadsword** seconded, and the substitute motion passed by **voice vote**.

S 1143: Relating to Regional Mental Health Services

Senator Stegner presented the rationale for **S 1143**, which is recommended by the Interim Committee on Mental Health and Substance Abuse that met during the past summer and fall of 2006. This legislation modifies and expands the State Mental Health Authority Development Grant program to include substance abuse services and

grant awards. The revised program will allow multi disciplinary proposals that encompass the Departments of Corrections, Juvenile Corrections, and the courts as well as Mental Health Boards. **Senator Stegner** answered questions of the Committee.

Mr. William Walker, Department of Health & Welfare, provided further clarification and discussion. This year there is a request from the Interim Committee on Substance Abuse and Mental Health to the Joint Finance and Appropriations Committee (JFAC) to fund the Mental Health Authority Development Grant program with a \$2 million one-time appropriation and with a \$1.4 million on-going appropriation.

MOTION: **Senator McGee** moved to send **S 1143** to the floor with a do pass recommendation. **Vice Chairman Broadsword** seconded, and the motion passed by unanimous **voice vote**.

S 1148: Relating to the Environment

Mr. Orville Green, Administrator, Division of Remediation and Waste Management, Department of Environmental Quality (DEQ), presented the rationale for **S 1148**. This legislation provides three technical corrections to the statute that created DEQ. The first correction requires the Director of DEQ to establish and administer an environmental monitoring and oversight program for the Idaho National Laboratory (INL). The second correction repeals the unconstitutional and obsolete radiation control statute found in Chapter 3, Title 39, Idaho Code. The third correction repeals the PCB Disposal Act, which provides the basis for the Department to administer a PCB waste disposal program if legal authority to do so could be delegated from the Environmental Protection Agency (EPA) to the Department. However, such authority cannot be delegated from EPA to the state. **Mr. Green** answered questions and provided clarification on this legislation for the Committee.

MOTION: **Vice Chairman Broadsword** moved to send **S 1148** to the floor with a do pass recommendation. **Senator Kelly** seconded the motion which passed by unanimous **voice vote**.

DISCUSSION: **Chairman Lodge** spoke to the Committee about the secretarial work necessary to keep up their books and meeting materials. Members discussed certain presentations that they would like to have scheduled in their meetings.

The Committee discussed again several ideas about **S 1158** and what actually constitutes "employment" as specified in this legislation.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:06 p.m.

Senator Patti Anne Lodge,
Chairman

Joy Dombrowski,
Secretary

Sandra Boyington,
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 20, 2007
- TIME:** 3:05 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Bair, Hammond, Werk, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Coiner
- GUESTS:** See an attached sign-in sheet.
- CONVENE:** **Chairman Lodge** convened the meeting at 3:17 p.m.
- MOTION:** **Senator Bair** moved to approve the minutes of January 25, 2007, **Vice Chairman Broadsword** seconded, and the motion passed by unanimous **voice vote**.
- S 1144:** **Relating to Controlled Substances**
- TESTIMONIES:** **Mr. Ken McClure**, Attorney, Givens Pursley LLP, presented the rationale for **S 1144**. The federal law requires that people in treatment for drug addiction must go to the treatment facility every day to get their daily dose of medicine, and the medicine must be handed to them by a doctor, nurse or physician's assistant. Regular counseling and evaluations are also available at the same facility.
- In response to questions, **Mr. McClure** explained that there may not be a doctor or nurse on site every day at these facilities. He said in order to meet the controlled substance requirements, the facility must be registered with the Board of Pharmacy. He provided clarification on which Chapters in the legislation are pertinent to the change.
- Mr. Brant Massman**, Owner, Center for Behavioral Health, spoke in favor of **S 1144**. He explained some particular types of addictions and drugs, and pointed out that there is legislation in place to regulate the treatment facilities. He also described particular drugs used in addiction treatments that help with the withdrawal process and are required for the recovery of certain patients. The medications are actually used to help people recover from their addictions.
- Mr. Massman** said that 80% of these people are employed, 10% are seeking employment, and 10% are on disability. Some people have insurance that will reimburse their expense, but most of them pay for treatment themselves. No public monies are involved. Treatment for drug and alcohol addiction is the single most monitored and regulated

medical treatment in the United States. **Mr. Massman** cited examples of several government agencies who provide licensing for treatment facilities, and where the physicians, nursing staff, and counselors obtain licensing for drug and alcohol treatment.

In response to questions from the committee, **Mr. Massman** clarified the licensing requirements and procedures. With regard to hiring practices, he said that most of the nurses and pharmacists are hired full-time. In certain states these treatments are Medicaid eligible, but it is not known whether certain addiction treatments are Medicaid eligible in the State of Idaho. Asked whether it is to his advantage to have Medicaid eligibility, he replied it most certainly would allow for treatment of more people, if the State would allow Medicaid to reimburse patients.

Mr. Massman said if this legislation becomes law, he intends to open a clinic in Idaho. There was further discussion about the location of the clinic, how many people it would serve and at what cost. Several Testing services are offered at the clinics but are also available at other facilities.

Senator Bair asked what is the success rate at the clinics, and **Mr. Massman** pointed out that patients enter on a strictly voluntary basis and pay for the services with their own money, which are large steps toward success. The staff works with each patient on their individual goals, and if they become employed full time, they have reached another major level of success. It could take six months to a year, with possible relapses for as long as the next seven years.

MOTION: **Senator Hammond** moved to send **S 1144** to the Senate floor with a do pass recommendation. **Senator Bair** seconded, and the motion passed with a unanimous **voice vote**.

S 1093: **Relating to the Board of Health & Welfare**

Senator Kelly presented the rationale for **S 1093**. The Committee had discussed this legislation on other occasions and had no further questions.

MOTION: **Vice Chairman Broadsword** moved to send **S 1093** to the Senate floor with a do pass recommendation, **Senator Werk** seconded, and the motion passed with a unanimous **voice vote**.

DISCUSSION: **Chairman Lodge** suggested that the Committee meet twice a week. The House has several bills that will be coming over to the Senate, and there are only a couple of issues and a few presentations to complete.

ADJOURNMENT: Chairman Lodge adjourned the meeting at 4:00 p.m.

Senator Patti Anne Lodge,
Chairman

Joy Dombrowski,
Secretary

Sandra Boyington,
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 21, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See an attached sign-in sheet.

CONVENE: **Chairman Lodge** convened the meeting at 3:00 p.m. and informed the members that Committee Secretary Joy Dombrowski was injured in a fall on the stairs and that Jennifer Andrews will be assisting as Committee Secretary.

SB 1146: Relating to Wholesale Drug Distribution

Vice Chairman Broadsword presented the rationale for **SB 1146** stating that problems with counterfeit drugs are finding their way into the wholesale distribution chain and ultimately in the hands of American consumers. This bill is proposed to limit the opportunities for introduction of counterfeit drugs into the U.S. market via the wholesale transfer process by tightening the rules around the licensing of prescription drug wholesalers and establishing pedigree requirements to ensure the authenticity of prescription drugs within the distribution system. The legislation also establishes penalties for violators.

Vice Chairman Broadsword described several instances of counterfeit drug distribution.

TESTIMONIES: **Ms. Linda Pryor**, Director of Government Relations, Pfizer Company, gave a background of the wholesale drug industry. She said Pfizer Company supports this legislation, citing how each section will benefit consumers. She explained the pedigree, which is the document or electronic file containing information that records each distribution of any given prescription drug.

In response to questions from the Committee, **Ms. Pryor** continued her discussion regarding the need for this legislation. **Senator Coiner** asked about responsibility to track pharmaceuticals from manufacturers to the pharmacies, and **Ms. Pryor** described what is required to tighten the process. After questions and discussion from the Committee members, **Chairman Lodge** thanked **Ms. Pryor** for her presentation.

Mr. Mick Markuson, Pharmacist, Board of Pharmacy, spoke in favor of **S 1146**, and answered questions along with discussion from **Senators Darrington and Kelly**.

Vice Chairman Broadsword asked about amendments in the 14th Order of Business or any revisions to the bill that the Committee felt necessary. **Chairman Lodge** said that there are also other concerns besides those of the Board of Pharmacy. **Senator McGee** suggested the Committee listen to other testimony before moving **S 1146** to the amending order.

Ms. Pam Eaton, President of Idaho Retailers Association (IRA), presented further information on **S 1146**. She said the IRA is neutral on this legislation. **Chairman Lodge** thanked **Ms. Eaton** for her presentation and asked for questions from the Committee.

DISCUSSION: **Vice Chairman Broadsword** discussed comments from **Ms. Eaton** and **Mr. Markuson**. She said she would be happy to see the bill go to the 14th Order of Business and has a copy of the amendments with her.

MOTION: **Senator McGee** moved that **S 1146** be sent to the 14th Order of Business for amendments, and **Senator Bair** seconded. **Chairman Lodge** asked for discussion.

SUBSTITUTE MOTION: **Senator Coiner** moved that **S 1146** be held in Committee at the discretion of the Chairman, and **Senator Kelly** seconded. **Vice Chairman Broadsword** reminded Committee members that the notice from the Pro Tem stated that all bills must be transmitted to the House by March 2, and she doesn't feel there will be time for a review and come back in a week to amend it. They have already drafted satisfactory changes and sees no reason that it cannot go forward. **Senator Werk** gave rationale for holding the bill in Committee. **Vice Chairman Broadsword** spoke about the minimal fiscal impact because most of the system is already set up. **Senator Kelly** said the bill should be held in Committee because there are still so many unanswered questions. **Chairman Lodge** remarked that the Committee has been discussing this particular bill for over an hour and that she is concerned about explaining why this bill is being sent to the 14th Order of Business. **Senator Coiner** said he still wants answers to some serious questions and would like to see the bill remain in committee for further work. There being no further discussion **Chairman Lodge** asked for a roll call vote. The substitute motion to keep **S 1146** in Committee passed by **roll call vote** with five in favor, two opposed, and two abstained. **Chairman Lodge** said that even though there is no meeting scheduled for the next day, they will continue the discussion of **S 1146** if the Committee so desires.

SJM 104: **Outlines concerns regarding direct-to-consumer advertising to pharmaceuticals, requests Congress to exercise more control over advertising content, and provide adequate funding so that the Food and Drug Administration can provide adequate oversight of direct-to-consumer advertising.**

Senator Werk discussed at length the background and rationale for this joint memorial. Committee members expressed opinions and asked questions. **Vice Chairman Broadsword** spoke in favor of **SJM 104**.

TESTIMONIES:

Chairman Lodge asked that **Dr. Russ Newcomb**, Lobbyist for the Idaho Medical Association (IMA), take the podium for questions. **Dr. Newcomb** testified that the IMA is neutral, explaining the risks and benefits of alternatives to consumer prescription advertisements. These advertisements are not public service announcements. They instill in the patients' minds that these, and only these, drugs are appropriate. The sole purpose of advertising is to increase the use of specific brand-name drugs.

Chairman Lodge asked **Dr. Newcomb** how often his patients ask for a particular drug even when they don't know what their diagnosis may be. He replied that some patients have questioned their medication, and he provides information to help them become informed. **Chairman Lodge** asked if they are more likely to take the doctor's suggestions if their prescriptions are expensive or paid for by insurance, and whether it makes any difference if they are paying for the prescriptions themselves or the prescriptions are covered by insurance. **Dr. Newcomb** replied that each situation is different and some people prefer generic prescriptions because of the cost, while others have insurance and use their option for brand name prescriptions which are more expensive.

The Committee had no further questions and **Chairman Lodge** thanked **Dr. Newcomb** for his presentation.

Mr. Bill Roden, Attorney and Lobbyist for Pharmaceutical Research and Manufacturers of America (PhRMA), said his group opposes **SJM 104**, Idaho's Joint Memorial addressing direct-to-consumer advertising. The cost of prescription drugs would probably be increased because of additional advertising. **Mr. Roden** discussed the other effects of increased advertising of prescription drugs and answered questions of the Committee.

Chairman Lodge thanked **Mr. Roden** for his input.

Ms. Elizabeth Criner, Lobbyist for Pfizer Corporation, said that Pfizer is opposed to **SJM 104**. She discussed prescription drug advertising and sampling and then answered questions of the Committee. It was agreed that it would be beneficial if consumers were better educated about the use of prescription drugs.

Senator Werk commented further about the testimonies and the purpose of **SJM 104**. **Senator Broadsword** stated the thought behind this memorial is good, but still there are many concerns.

MOTION:

Vice Chairman Broadsword moved that **SJM 104** be placed on the table. The motion was seconded by **Senator Hammond**, and passed by **voice vote**.

ADJOURNMENT: **Chairman Lodge** gave the Committee the latest news about the injury of Committee Secretary, Joy Dombrowski. **Senator McGee** suggested that the Committee send flowers just as soon as Joy is able to have them in her room.

There being no further discussion, **Chairman Lodge** adjourned the meeting.

Senator Patti Anne Lodge,
Chairman

Joy Dombrowski,
Secretary

Sandra Boyington,
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 26, 2007

TIME: 3:05 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See an attached sign-in sheet.

CONVENE: **Vice Chairman Broadsword** convened the meeting at 3:05 p.m.

H 190 **Relating to reimbursement rates under Medicaid for certain providers**

Mr. Larry Tisdale, Chief of Bureau of Financial Operations, Division of Medicaid, Department of Health & Welfare, presented an update for the Committee regarding **H 190**. The Department hired two consulting firms to research and found it difficult to research because of the differences in case work requirements, wages, and locations. **Mr. Tisdale** introduced **Mr. John Villegas**, representing Johnston, Villegas-Grubbs & Associates.

Mr. Villegas provided handouts to the Committee, and explained the process for developing the rates and adapting them to the Idaho rate structure. They conducted the study and gathered data. Since they had many questions, they met with the providers and found them cooperative and helpful. He was complimentary to the State of Idaho saying that there is a very constructive relationship with the provider community and the intervention services in the State are impressive.

Mr. Villegas responded to questions about the rate schedules, immunization services, and standardization of services.

Vice Chairman Broadsword thanked **Mr. Tisdale** and **Mr. Villegas** for their presentations.

S 1145: **Relating to Midwifery**

Senator Keough introduced **S 1145** and thanked the Committee for hearing this proposed legislation.

TESTIMONIES: **Ms. Pat Holmberg**, Volunteer Lobbyist for the Idaho Midwifery Council, spoke in favor of this legislation, which gives parents choices on how

and where their children are born. The council has spent more than three years working with attorneys, peers, and with national organizations on this legislation, as well as all of Idaho's neighboring states. She believes that **S 1145** will ensure high standards for practice and certification for midwives in Idaho. If complications arise during the birth, the mother and child can be transferred to a hospital. **Ms. Holmberg** clarified the issue of how insurance companies then become involved and whether or not insurance benefits are even available.

Ms. Holmberg stood for questions relating to liability of physicians, repeal of a similar act in Utah and information from neighboring states. She said she knows of no states experiencing issues of liability for the medical providers.

Ms. Judy Jones, Registered Nurse (RN) Administrator, St. Luke's Hospital, and representing the Women's Services on the Idaho Perinatal Advisory Board. She said that because of the concerns about medications and prescription quantities and about life insurance issues, they are opposed to this legislation. She said they would be willing to work with the lay midwifery community to develop some different language.

Ms. Michelle Bartlett, Certified Midwife, Idaho Midwifery Council, spoke in favor of **S 1145**. She said this bill will increase the safety for those people who choose to use midwife services. She gave clarification to transfers for care and life insurance issues. In response to questions, **Ms. Bartlett** explained the training, education, and apprenticeship period of midwives. It involves a lot of training and takes three to five years to complete. They work closely with physicians as a rule, but in rural areas it is not always possible.

Dr. Penny Beach, Physician, Idaho Perinatal Project, spoke in opposition to **S 1145**. **Dr. Beach** said they are very much in favor of licensing midwives, but they oppose this bill. She gave some brief statistics from the Terry Reilly Center and talked about the Idaho Perinatal Project. They support mandatory life insurance and appointment of a physician to the Board. **Dr. Beach** clarified points regarding a formulary committee and other questions of the Committee.

Chairman Lodge asked for names of people who came a long distance to testify and might not be able to come back.

Ms. Kendra Pole, Massage Therapist, spoke in favor of **S 1145** on behalf of herself and her family.

Ms. Coralee Anderton, Child Birth Educator, Idaho for Midwifery, spoke in favor of **S 1145**.

Ms. Sherry Riener, Midwife, Idaho Midwifery Council, stood in support of **S 1145**. She clarified questions about re-certification and continuing education every three years.

Dr. Pawel Zieba, Physician, Idaho Perinatal Project, spoke in opposition to **S 1145**. He said that in Poland the law requires all births take place in a hospital. He described three types of midwives: nurses, lay midwives, and certified professional midwives. He stated that education requirements are too vague in this legislation. **Dr. Zieba** is a neonatal specialist and said he has had babies come into his care that were not born in a hospital and required intensive care.

Ms. Paula Wiens, Midwife and President of the Idaho Midwifery Council, testified on behalf of herself and **Ms. Barbara Rawlins** in favor of **S 1145**. Licensing options are currently available in 22 other states including all of Idaho's neighboring states. She encouraged making that choice available in Idaho.

Ms. Sasha Collins, Attorney, representing herself and her family, spoke in favor of **S 1145**.

Mr. Bob Seehusen, CEO, Idaho Medical Association, opposed **S 1145** based on the lack of standard requirements within the entire profession. They should establish their own profession and establish the standards required for that profession. The health care organizations have expressed concern about the issue. In response to **Vice Chairman Broadsword**, **Mr. Seehusen** discussed certain qualifications for voluntary licensure as written in the bill. He also further explained the need for an emergency care plan.

Ms. Teresa Acheson, Certified Professional Midwife (CPM), spoke in favor of **S 1145**. She said she has worked as a CPM for 25 years and delivered more than 700 babies. She is not licensed, but she has a national certification.

Ms. Liz Britain, Certified Nurse-Midwives (CNM), said that licensing must be mandatory because these midwives must be held accountable. She said she remains neutral on this legislation and only supports it if the licensing is mandatory.

Mr. Greg Wiles, Principal, spoke as a parent and educator and supports **S 1145**. Of his four children, one was born in a hospital, one at a birthing center, and two at home.

Dr. Rich Rainey, Pediatrician employed by Regence Insurance, is neutral in regard to **S 1145**. His concerns with the legislation include lack of clarification regarding malpractice; third party reimbursement; confusion with types of midwives; and, that obstetric emergencies do happen during "low-risk" births. **Dr. Rainey** clarified questions about malpractice insurance and insurance reimbursement for parents. He also discussed Utah's legislation which has just recently been repealed.

Mr. Eric Schoen, Medicaid Manager for The Baby Place, stood in support of **S 1145**.

Mr. Richard Corn, Electrician, supports **S 1145**, as he has nine children

and one on the way with the last few being delivered by midwives. He spoke of his research into their qualifications and found them to be satisfactory.

Dr. Renee Bobrowski, physician at St. Alphonsus Hospital, has 12 years of practice, and she works with Certified Nurse-Midwives and supports them. But she is opposed to **S 1145** and supports mandatory licensure.

Mr. Clarence Blaya, Maternal Fetal Medicine Specialist, for St. Luke's and St. Alphonsus Hospitals, opposes **S 1145**. He does not oppose the Idaho Perinatal Project, but objects to the way this bill is written because he works in high-risk obstetrics.

Ms. Julie Taylor, Director of Governmental Affairs, Blue Cross of Idaho, said they are neutral on **S 1145** and that **Dr. Rich Rainey's** concerns are their concerns also. Third party reimbursement would push opposition. Malpractice insurance should be required for Certified Nurse-Midwives.

Ms. Toni Lawson, Vice President of Governmental Affairs, Idaho Hospital Association, expressed opposition to **S 1145**, citing the need for quality and safety as two main issues.

Chairman Lodge pointed out that several Committee members have an appointment within a few minutes and asked **Senator Keough** what she preferred for the deliberation on **S 1145**. The Committee could continue discussion at the next meeting, or forward it to the 14th Order of Business for amendments. **Senator Keough** said she would be willing to work with anyone on this legislation to review the amendments.

MOTION:

Senator Darrington moved that **S 1145** be held in Committee at the discretion of the Chairman. **Senator Kelly** seconded. **Senator McGee** said there are several things that need to be addressed. **Senator Broadsword** recognized that there are a couple places that need adjustment. She said she would not want it amended in the 14th Order only to get it back and decide it was a waste of time and energy. **Senator Keough** offered to work on this bill and bring it back for more discussion. **Senator Coiner** pointed out that the Committee has a good start on this bill. The motion to hold **S 1145** in committee at the discretion of the Chairman passed by unanimous **voice vote**. **Chairman Lodge** suggested that Committee members break out into groups, to ask some questions, and to work with **Senators Keough** and **Heinrich** to bring something back to the Committee.

DISCUSSION:

Chairman Lodge thanked the Committee and people who testified for being patient and said their testimonies were outstanding.

S 1146

Relating to Wholesale Drug Distribution

Vice Chairman Broadsword said all the suggestions that were made in the previous Committee meeting were referred to the Office of the Attorney General for the proper language, and she believes they have

addressed each concern. The Committee gave unanimous consent to allow **S 1146** to go to print.

ADJOURNMENT: **Chairman Lodge** adjourned the meeting at 5:40 p.m.

Senator Patti Anne Lodge,
Chairman

Joy Dombrowski,
Secretary

Sandra Boyington,
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 28, 2007
- TIME:** 3:00 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly
- MEMBERS ABSENT/ EXCUSED:**
- CONVENED:** Chairman Lodge called the meeting to order at 3:06 p.m.
- GUESTS:** See attached sign-in sheet.
- S 1175** **Relating to Compensation of the Members of the Board of Health and Welfare.** Mr. Bill Walker, Department of Health & Welfare, outlined the scope of **S1175**, which increases the honorarium provided to members of the Idaho Board of Health and Welfare. The legislation raises the honorarium to \$100 per day when the Board meets. Fiscal impact will result in an annual increase of \$6,300, or smaller. There is no impact to the state General Fund. A question-and-answer period ensued.
- MOTION:** **Senator Hammond** moved to send **S 1175** to the Senate floor with a do pass recommendation. **Senator Bair** seconded. After a brief discussion, the motion passed by unanimous **voice vote**.
- S 1170** **To address recent changes in federal law applicable to the long-term Care Partnership Program.** Mr. Steven J. Tobiason, America's Health Insurance Plans, presented the rationale for **S 1170**. Mr. Tobiason recognized **Mr. Robert Aldridge**, who is a joint sponsor of the legislation and stated that the changes in **S 1170** are designed to make it consistent with the 2006 changes in section 2. Section 3 is a notice change, which has been reviewed and approved by the Department of Insurance.
- A thorough question-and-answer period ensued on subjects that included notice requirements, border ties, and compliance.
- MOTION:** **Senator McGee** moved to send **S 1170** to the Senate floor with a do pass recommendation. **Senator Hammond** seconded, and the motion passed by unanimous **voice vote**.
- S 1147** **To create a pilot project to establish a net model for providing Idaho school districts with clinically trained substance abuse and mental health specialist counselors and specialist social workers to address critical shortages in mental health and substance abuse practitioners and services for teens in Idaho's rural areas.** **Senator Corder** outlined the scope of **S 1147**, which focuses on teen early

intervention specialists. Co-sponsors are **Senators Goedde, Kelly,** and **Representatives JoAn Wood, Henbest, and Lefavour.** The legislation asks for four clinically trained specialists to participate in a three-year pilot program. The fiscal impact would be \$330,000 annually for three years, or a one-time grant of \$990,000.

Representative Henbest outlined the importance of **S 1147** and responded to questions, which included: efficacy and oversight of resources, speciality of new hires, timeliness, criteria for choosing districts, and delivery of service, source of initial recommendation, and similar programs by other states

Representative Lefavour addressed **Senator Darrington's** concerns about delivery systems, and stated that this legislation focuses on prevention.

TESTIMONIES:

Tod Gunter, School Social Worker, specializes in intervention for the Hailey Schools, stood in support of S 1147.

Julie Carney, School Social Worker, NASW/Blaine Schools also stood in favor of the legislation.

Rob Winslow, Executive Director, Idaho Association of School Administrators (IASA), spoke in favor of this legislation, supports accountability and buy-in and are committed to working with Department of Health and Welfare.

Vice Chairman Broadsword asked how many districts already have school counselors or social workers. **Julie Carney** responded to the question stating that some districts do have academic counselors, but not specialists in prevention.

Jan Downs, Counselor, Boise School District, spoke in support of the bill, emphasizing the epidemic of methamphetamine and other hard substances in Idaho, intervention of which she said is not being met.

Senator Darrington, said he would be leaving the meeting early but is in support of this legislation, albeit recognizing problems and risks down the road. He asked to go on record that it is not automatic after a three-year trial period.

Tracy Warren, Program Specialist, Idaho Council on Developmental Disabilities supports the bill (see attached handout).

MOTION:

Vice Chairman Broadsword moved to send **S 1147** to the Senate floor with a do pass recommendation. **Senator Hammond** seconded.

After further discussion, relating to the need in rural schools, the desirability of the pilot program, and costs, the motion passed by unanimous **voice vote**.

Presentation: **Erwin Teuber**, Executive Director of the Idaho Primary Care Association, presented with a slide presentation and hard-copy materials on behalf of the Community Health Centers. Ten community health centers in Idaho operate in 34 locations as community-owned, not-for-profit organizations. **Mr. Teuber** said the demand is huge; more Idahoans are uninsured, and community health centers provide a low-cost, high-quality, cost-effective alternative to emergency care to those who are most in need. Fifty percent of the Centers' patients are at or below the poverty level; 65 percent have no insurance. The Centers charge poverty-level patients \$14 per visit, plus \$6 for lab work. Approximately 30 percent of revenue comes from federal grants and they also use a variety of avenues to generate additional income. There are now four dental clinics and an enormous demand for this service.

Mr. Teuber answered questions on subjects including: 340B drugs, lab-work costs, and immunity for volunteers. **Senator McGee** thanked Mr. Teuber and all Center associates, on behalf of the committee, for their important work.

Chairman Lodge thanked **Mr. Teuber** for taking the time to present to the committee.

ADJOURN: **Chairman Lodge** adjourned the meeting at 5:13 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Jeanne' Clayton
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 5, 2007
- TIME:** 3:00 p.m.
- PLACE:** Room 437
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk and Kelly
- CONVENED:** **Chairman Lodge** called the meeting to order at 3:06 p.m.
- GUESTS:** See attached sign-in sheet.
- MOTION:** **Senator Hammond** moved to approve the minutes of January 29, 2007. **Senator Broadsword** seconded the motion. The motion carried by **voice vote**.
- H 157** **Representative Henbest** presented a bill representing an idea whose time has come. The work that went into this legislation is in place. Quite a few years ago the Long Term Care Facilities came to the Board of Nursing asking for the development of a specialized position among certified nurses aids that would allow a nurse's aid to dispense medications, and that is essentially the legislation presented. The legislation would develop the role of a certified medication assistant. This would be essentially a nurse's aid who would have additional training along a specific curriculum and would be allowed to provide medications to patients, thereby relieving a registered nurse, especially in a long term care facility, from having this responsibility along with all the other responsibilities that a nurse in a long term care facility has. The concern has been that giving medications in a facility when you are also in charge of administrative and managerial and patient assessment issues, etc. is very distracting because a nurse is pulled away from tasks to meet more urgent functions, and the opportunity for error increases because of that distraction. This new position of certified medication assistant would solely deliver the medications to the patient. In this day and age medications in long term care facilities are bubble-packed, name on the back of the bubble-pack and in some institutions there are pictures of the client on those medications as well. This would give that responsibility to a nurse's aid. When the Board of Nursing and the Long Term Care Facilities came to **Representative Henbest** with this request, she admits she was concerned about safety issues and delegating what has traditionally been a licensed nursing function to a medication assistant. In reading where we are in the U.S. today and understanding health care today and understanding that the National Conference of State Boards of Nursing has now gone down the path to approving curriculum and to moving forward on this certification across the United States. There have been other states that have gone down this path and have actually seen increased safety and less errors as a result of this delegated very focused role.

Senator Hammond clarified that when discussing the administration of medications, he assumes this is just dispensing a specific dosage, particularly going around to the rooms in the nursing home or extended facility, but wonders if that includes IV's or providing shots.

Representative Henbest responded that is correct, and that would be further defined in the rules, but it would probably not likely be narcotics and scheduled medications; it would be routine medications. So there would be some sideboards around what medications could be ordered.

Senator Hammond stated the Senate just passed through a bill very similar to this for another particular instance, dealing with opiates and those kinds of drugs. He believes this makes sense.

Senator Kelly asked about the requirement that a licensed nurse shall supervise the medication assistant. Would you assume that the licensed nurse is onsite? Would they be supervised physically at all times?

Representative Henbest replied that the Board of Nursing could more accurately answer that, but believes there would be a nurse onsite, on duty, at the time this was occurring. In all facilities like assisted living or hospitals that decision would have to be made whether they were allowed to dispense medications in this manner.

Sandy Evans, Executive Director for Board of Nursing, stated that **Representative Henbest** has indicated exactly what she would have said. She is available for questions.

Robert Vande Merwe, Idaho Health Care Association, represents nursing facilities and wants to ensure the Committee knows they are in collaboration with the Board of Nursing. They come together and support a common piece of legislation and they do agree that this will partially address a nursing shortage, as well as give certified nursing assistants a career ladder; somewhere to go with their career, as well as hopefully improve patient care, as has been demonstrated in other states.

MOTION:

A motion was made by **Senator Hammond** to send H 157 to the floor with a do pass recommendation. **Senator Broadsword** seconded the motion. The motion carried by **voice vote**.

H 121

Representative Ring stated that **H 121** is a simple, straightforward bill that simply strikes out the two words *bowling alleys* from the exceptions to the provisions of the Clean Indoor Act in Idaho Code 39-5503. By passing **H 121** we have the opportunity to improve the health and safety of many citizens of Idaho; the thousands of people who enjoy the sport of bowling. Bowling is excellent entertainment and physical activity, a lifetime sport. Young people often begin bowling and continue as adults into their 70's, 80's and even 90's. It provides a great alternative to sitting on the couch watching TV or playing video games. It can help combat the obesity epidemic we are encountering. However, many families will not participate and refuse to allow their children to bowl because of the exposure to tobacco smoke in bowling alleys. The U.S. Surgeon General has now stated that what the medical community has long known; that secondhand smoke is a significant cause of illness, injury and shortened life span. Nonsmokers who are repeatedly exposed to secondhand

smoke, such as bartenders and bowling center proprietors, have a significantly higher instance of heart disease, lung and bladder cancer and obstructive pulmonary disease. Children who are exposed have more ear infections and asthma and these ill effects are cumulative with repeated prolonged exposure. Therefore, since secondhand tobacco smoke is a known health hazard, it just makes sense to prohibit smoking within an area such as bowling alleys that are an attractive gathering place, especially for young people and families and also for the public at large. Relating to economics; a number of bowling centers have voluntarily gone smoke free already, and have seen their profits increase. After the passage of the Clean Indoor Act three years ago, virtually all restaurants in Idaho have noticed an increase in business and profits, as well as much happier wait persons and managers.

Senator McGee asked for a reminder on why we put the provision in on bowling alleys to begin with. **Representative Ring** responded he was not the author of the Clean Indoor Air Act, believes Senator Hill, his co-sponsor, was very active in the writing of that, and yields to him for response.

Senator Hill stated that bowling centers were always exempted from the Clean Indoor Air Act. Before what was passed three years ago, there was a Clean Indoor Air Act that allowed for designated smoking areas in public places, but even then bowling centers were exempted from having to add designated smoking areas. It was part of the way the law was, and they would have had to change that part as well, and considering how the bill just barely made it through a certain committee on the other side of the rotunda, they did not want to lose one single vote.

Senator Darrington asked how many people were signed up to speak in opposition to the bill. **Chairman Lodge** responded there are none. She asked if the Magic Valley Tobacco Free Coalition students would like to come as a group to the podium. She thanked them for coming, and asked them to introduce themselves.

Casey Warner stated that tobacco as shown by the National Institute on Drug Abuse shows that teens' 12-17 who smoke are 14 times more likely to abuse alcohol, 100 times more likely to smoke marijuana and 32 times more likely to use cocaine than nonsmoking peers. Her mom has always told her that, because she was a drug addict, and her brother didn't believe her and soon after engaging in smoking he did drugs and alcohol, but he has been drug free for five years.

Leah Murphy stated the Surgeon's General Warning has stated the secondhand smoke increases the risk of heart disease. Heart disease really is the number one killer of adults in America. Facts state that if you keep a child or even an adult in a smoke-filled room for one hour they smoke the equivalent of one cigarette.

Brandy Fay Cummins stated that there is an issue about the worry of businesses losing clientele if bowling centers choose to go smoke-free. They are from Twin Falls and in the next town over in Filer the owners of

the bowling alley there voluntarily went smoke-free because they did not want their children to grow up in that kind of environment and their business has gone up 23 percent. There are also many other bowling centers throughout the nation that have also seen their business increase. In her opinion, the idea that bowling centers will lose business is a nonissue.

Chairman Lodge suggested that the coalition could get the students together and go to those facilities that are smoke-free and also take up bowling as a good exercise program.

Michael Brown stated that he is on the bowling team also and thinks it is unfair that they have to bowl in a bowling alley that is always full of smoke. He wishes it was not, because when they went over to Filer to bowl in a tournament afterward they all felt better, smelled better and they all bowled better.

Elizabeth Warren stated she is part of the bowling team. They knew that a bowling alley in Twin Falls was not smoke-free, and when they walked in they were disgusted and appalled. In a bowling alley during league time with older people who are smoking constantly, there are clouds of smoke there. When you walk through them it's kind of a swim through the smoke. They are hoping the Committee will pass this bill. **Chairman Lodge** thanked them for their testimony.

Russ Newcomb, M.D., representing the Idaho Medical Association, stated that they support **H 121**.

Johnna Dunten, speaking as a mother and friend. For over 40 years she has been in bowling centers and very active on many boards across not only Idaho but the nation. Bowling alleys, as most people call them, have changed so much over the past 15 years and have moved into an upgraded state. There are cleaner, nicer bowling centers and this is the focus of where we are trying to go. Idaho has bowling centers ranging from four lanes to 40 lanes, and it is a wonderful place for families, groups, business parties and communities to come together. **H 121** is extremely important to all bowlers who are currently in bowling centers, but most importantly to the children, from infants all the way up to our teenagers. We truly need our children to get out of the streets and onto the alleys in clean air bowling centers. Schools around the state have students bowl as part of their curriculum. Not all students are able to excel in basketball, football, soccer, tennis, or baseball, but they do have an opportunity excel at bowling. The other sports do not allow smoking for their participants or spectators, so why should we in the bowling centers. Depending on the size of the centers is directly proportional to the number who are within the bowling centers, especially our juniors. Bowling is definitely a participation sport as well as a great recreational sport. Bowling centers are aware that the youth are safe and that providing a smoke free building will be a healthy place for them to enjoy time with their friends and families. **Ms. Dunten** urged the importance to pass **H 121**.

Mona Lindeen, representing bowling proprietors in the State of Idaho. Our bowling proprietors are business owners. They provide the facilities and the programs for literally thousands of Idahoans to enjoy the sport of bowling; quite likely the most popular individual sport in this state. They do not want to kill kids, or to hurt children or adults in any way. They provide the opportunity for participation in a sport thoroughly enjoyed by individuals and families. They pay very careful attention to the conditions of their lanes, the ventilation systems and the cleanliness of their facilities, all in the spirit of making certain their clientele have a safe, clean and enjoyable environment to enjoy their bowling experience. While they do not oppose **H 121**, please remember that no one is forced to enter a bowling center where there is smoking. That is a free choice in our society. Bowling proprietors are business people. The bowling business is their livelihood and that of the people they employ. In some cases, the passage of this legislation will likely jeopardize the annual income of some bowling center proprietors. Many centers, especially those in the rural areas of Idaho, do not have food and beverage services that contribute to their revenue. For them, the bowling fees are their revenues, which could certainly be reduced by the implementation of this legislation. Many of those centers are not members of the Idaho Bowling Proprietors Association, so she cannot speak for them. However, she is aware that without food and beverage revenue at their center in Boise or with a reduction of such, their business plan and employee base would be significantly affected. Smoking is not a crime, and although testimony today has indicated it is a health hazard, she would again like to remind the Committee that our freedoms and our liberties allow us to make choices in our society. Citizens could choose if they want to bowl or not bowl in a center that allows smoking. The majority of their membership of the ISBPA does not oppose this legislation, but they also do not want to be represented as being uncaring and negative about their fellow citizens and customers. They run a business just like many of us, and want to be respected. There has been testimony related to this legislation that would tend to reflect otherwise. Once again, their bowling proprietor membership is not opposed to **H 121** and they appreciate the opportunity to be heard today.

MOTION:

A motion was made by **Senator Werk** to send **H 121** be sent to the floor with a do pass recommendation. **Senator McGee** seconded the motion. **Senator McGee** complimented his seatmate from District 10, **Representative Ring**. Very few have done more to influence the health of Idahoans and the betterment of the health of Idahoans than **Dr. Bob Ring** has in the last few years.

Senator Darrington stated that he strongly supports this legislation. If we can ban smoking in restaurants and public buildings as **Senator Hill's** bill did some years ago quite successfully, he thinks the positive results could be extended to bowling alleys. He hopes this is not another step to get into homes and automobiles because children might be present. There will be a point at which government ought not intrude into the lives of people and it seems to him that as far as the homes would be an intrusion by government. He strongly supports the legislation today.

The motion carried by **voice vote**.

H 158

Mick Markuson, Director of the Idaho State Board of Pharmacy, stated that **H 158** is a fairly simple bill. The language was inadvertently left out of the original language. It spells out the means for law enforcement authorities pursuant to search warrants, subpoenas or other court orders to obtain specific prescription and patient information. This is a valuable tool for law enforcement when they are investigating individuals obtaining controlled substances by fraud, phony call-ins, stealing prescriptions from practitioners or altering of prescriptions. It gives law enforcement the means that spells that for them to obtain this information when they go into a pharmacy.

MOTION:

A motion was made by **Senator Hammond** to move **H 158** to the floor with a do pass recommendation. **Senator Kelly** seconded the motion. **Senator Coiner** asked if this could go to the consent order. **Chairman Lodge** said that was a good suggestion. **Senator Coiner** made a substitute motion to send to the consent calendar. **Senator Darrington** stated his own preference is to send it to the floor. **Senator Coiner** withdrew his substitute motion. The original motion carried by **voice vote**.

H 164

Mick Markuson stated this is a simple change allowing mail service pharmacies to reduce their required hours of operation from six days to five days. Some of these pharmacies are very small, especially pharmacies dealing in compounding diabetic supplies or home health agencies, and this is an issue for them. In those cases they are only open five days a week and we require six. The request is that we reduce that to five days. **Chairman Lodge** requested the Committee review a letter from the Idaho Retail Pharmacy Council dated March 5, 2007. **Senator Broadsword** inquired if this would be an enhancement for mail order services, if it might cause any additional mail order services to start up in the state. **Mr. Markuson** stated he is not sure it would. The history of this original bill goes back a long way and he thinks the only member of this Committee here at that time was **Senator Darrington**. The initial legislation was prompted by a prescription sent in to this state and there was an error and the young lady who received the prescription died from that error. That prompted that initial legislation. Reading that letter, he is in sympathy with this; he was an independent pharmacist for 28 years. He knows the battle of our pharmacists in this state. What the bill really does is allow us to regulate those pharmacies that are sending medication into this state. In this manner they have to follow the laws of Idaho to be able to send prescriptions to patients in Idaho. These are the very small pharmacies. Some of the patients in Idaho have worked for companies or groups that require through a penalty of costs to use mail service pharmacies; they do not have a choice. He would like to see that different. But maybe someone on the Committee is involved in one of those issues where their third-party payer will require them to get a prescription from a mail service provider, and they can use the community pharmacy but they can only get a 30-day supply, and pay a co-pay. They do not allow them to fill the 90-day supply but they do the mail service pharmacy, so the patient is compromised by the third-party payer for their plans, which he thinks is unfair and our pharmacies are not on level playing ground with these out-of-state pharmacies. Some of these

pharmacies are tremendously big. He knows of one that can fill up to 600,000 prescriptions per week. It is tremendously automated, they are in contract with great huge companies for their third-party pay. That has become a fact of life and he doesn't know how we can deter that.

Senator Broadsword asked why this legislation is coming forward now; if he was asked to bring this by the mail order pharmacies. **Mr. Markuson** stated that some of the smaller pharmacies that only operate five days a week asked them to bring this forward. **Chairman Lodge** asked about the State of Idaho insurance policy, if **Mr. Markuson** has worked with them to see about encouraging them to use local pharmacies, and asked why an out-of-state pharmacy can give a 90-day supply and an in-state pharmacy can only give a 30-day supply. **Mr. Markuson** stated that is the way their provider requires them to get prescriptions. They dictate to the patient in Idaho that if you get a prescription filled locally in the state you can get a 30-day supply with a co-pay they will pay for. They will allow you to use the mail service pharmacy and get a 90-day supply with a co-pay. So the patient is getting compromised as far as cost if they do not use the mail service pharmacy. He agrees with this letter. He worked under this situation for 28 years, and it was not near as bad when he was in business as it is now. They license over 300 mail service pharmacies shipping into this state, so it is a huge issue, and it is an issue for our pharmacies.

MOTION:

Senator Hammond recognized that this bill may have been brought forward by some of the smaller out-of-state pharmacies, but he sees no reason why the state of Idaho would want to help out-of-state pharmacies be more successful. He moved that **H 164** be held. **Senator Broadsword** seconded the motion.

Senator Hammond stated that this further limits access for Idaho patients to the pharmacies they are being told to use, and asked why would we do this for an out-of-state pharmacy. We are not helping our businesses, we are not lowering costs for all our citizens. What we are doing is helping an out-of-state pharmacy lower their costs. He stated the bill makes no sense to him and he cannot support it.

Senator Werk stated that was one of his impressions, the other is if we can provide lower cost drugs to our citizens, are we providing a better service overall, especially if people don't have health insurance.

Senator Broadsword stated that people who don't have health insurance don't get their prescriptions from mail order pharmacies; she would be really shocked if they do.

Senator Werk stated to **Mr. Markuson** that he does not really understand this. He asked why our Board of Pharmacy is coming to lessen the amount of time that patients in Idaho have access to their pharmacist.

Mr. Markuson responded that he had no problem with this Committee not approving this bill. It would be much easier for them to tell any of these mail service pharmacies that do not want to stay open six days a week to basically say that was a thought, we went to the Legislature, they did not agree with that occurring.

Senator McGee stated that if the presenter of the bill does not want the bill passed, why would we pass the bill.

Senator Darrington stated he does not think it is a matter of **Mr. Markuson** not wanting the bill to pass; he is being very factual and doing what he was asked to do. He stated he thinks the motion is entirely appropriate.

Chairman Lodge reminded the Committee the motion is to hold H 164 in Committee. The motion carried by **voice vote**.

HJM 1

Representative McGeachin. HJM 1 would urge Mike Leavitt, U.S. Secretary of Health and Human Services, to amend or eliminate the phase-down state contribution that was implemented as part of the Medicare Modernization Act of 2003. The MMA was put into place in 2003 and designed to deliver a pharmacy benefit to Medicare beneficiaries. It was also designed to ease State Medicaid programs of their responsibilities of providing pharmacy benefits to persons duly eligible for both Medicare and Medicaid. Although the clear Congressional intent behind the MMA was to ease the physical burden on the State, the phase-down state contribution, otherwise known as the "clawback" will actually cause the State of Idaho to spend more money in Medicaid than it would in the absence of the law. The way this works is the federal government took the per Medicaid prescription costs in the year 2003 and used that as a base cost, and then they put in an inflation factor in the cost, and then projected that into future years. Since the year 2003, anything that we have done in the State to try to reduce our pharmacy costs in Medicaid is to no effect, because the costs that they are charging us back is more than what we actually would have paid. According to Medicaid projections in the year 2015, that additional cost to Idaho will be approximately \$19 million. That is how it works. Many of the Committee members, and many people in the State of Idaho in the Medicaid division have done a number of things to try to reduce our prescription drug costs in Idaho. That is what this bill would do; it would ask the U.S. Secretary of Health & Human Services to either amend that provision or eliminate it because it has created a fiscal burden on the State of Idaho. The state of Texas has brought a Supreme Court case, along with a few other states, that question the federal government's right to tax states and asserts that the states lose control of their own budgets with the clawback calculation that was included in the MMA.

Senator Kelly said she was interested in the pending litigation in Texas. She assumes this is some kind of regulation as a result of this statute and now the State of Texas and other states are apparently challenging it. She asked if Idaho is a party to that litigation? **Representative McGeachin** stated that the federal law was the Medicare Modernization Act of 2003, this clawback effect, is a provision within that federal law. Basically what happens is the federal government comes in to the state, picks up our costs for dual eligibles for Medicaid prescription drug costs; those that are qualified both for Medicaid and Medicare in the state of Idaho. The federal government comes in and picks up that cost from the state, but then they in turn charge us back based on this formula, that's

what is occurring. The lawsuit was filed by the state of Texas, along with a few other states. Idaho is not a part of that lawsuit.

Senator Werk stated that Congress appears to be considering now opening the door to discounted drugs, and would like to figure out how that impacts the clawback provision. Part of the clawback seems to be that we would not have that ability and then we get clawed back because the cost of those drugs suddenly decrease for the state, compared to when we had discounting. If discounting is allowed to occur within this program, will that affect the clawback provisions and will it affect this memorial. **Senator McGeachin** said she would like to yield that question to **Paul Leary**.

Paul Leary is not sure how that will affect this since we are currently under the federal regulations. That is not addressed so that would be a provision, but he would say since the MMA has been implemented in 2003, the federal government has seen much less of a price impact on the federal government, which has not affected the level that we pay back.

Senator Werk asked **Senator Darrington** about the appearance of an amendment to this memorial. He cannot remember whether or not the Committee decided they could amend a memorial if they want, but he thought the discussion had been that the Senate cannot amend a House memorial.

Senator Darrington stated the Committee cannot amend resolutions or memorials; he does not know of any procedure to do that. What we are trying to amend here is a straight house joint memorial.

Representative McGeachin stated the house joint memorial was amended in the House, so she's not asking for an amendment.

Senator Hammond asked what is the projected overpayment. Is it saying this is how much more we will have to pay than we should have? **Representative McGeachin** replied yes, that in the absence of the federal law, if we would have been picking up the costs of our own Medicaid individuals, their prescription drug costs, it would cost less than what the federal government is charging us back as an assessment on top of our expense because of this base cost calculation has an inflation factor on it which does not take into consideration all of the things we have done as a state to try to lower those Medicaid prescription programs.

Senator Broadsword asked if it is the goal of this memorial to show Congress and Secretary Leavitt that Texas is not the only state that has a problem and there are a number of states for which it is blatantly unfair. **Representative McGeachin** stated that it is twofold: the state needs to let our federal partners know how legislation they pass affects the states. The other part is that we would like to send a message that even though Idaho has not filed a lawsuit against the federal government we want them to know that this is causing hardship on the state.

Senator Kelly asked if the Department of Health & Welfare and the Governor's office are aware of this. **Representative McGeachin** did seek the assistance of the Medicaid division to help with the language and also with the calculations. **Senator Kelly** asked if Department of Health & Welfare and the Governor's office are supportive of this memorial. **Mr. Leary** responded they are; in fact, the National Governors Association has also taken this on.

MOTION: A motion was made by **Senator McGee** to move HJM 1 to the Senate floor with a do pass recommendation. **Senator Broadsword** seconded the motion. The motion carried by **voice vote**.

MOTION: A motion was made by **Senator Hammond** to move H 4 to the Senate floor with a do pass recommendation. **Senator McGee** seconded the motion. The motion carried by **voice vote**.

S 1184 **Senator Broadsword** discussed **SB 1146**. It was held in Committee and they went back to the drawing board with the Board of Pharmacy and have come up with a new piece of legislation. **Senator Broadsword** referenced an article from *Parade Magazine* and reads the first paragraph: "Some call it the most perfect crime in medicine. Buy some empty gelatin capsules, fill them with worthless powder, print a phony label and sell them to a drug wholesaler who has no scruples or who just chooses to look the other way. The unsuspecting customer who buys the drugs from his corner pharmacy will almost certainly never discover why he is getting sicker instead of better. This is called drug counterfeiting, a business that has expanded in the last five years. Phony drugs have already taken the lives of several Americans, and the perpetrators have walked off with nearly \$35 billion in black market profits."

Senator Broadsword appreciates the opportunity to present Idaho Wholesale Drug Distribution Act. She briefly reviewed the changes in the sections of the bill dealing with wholesale licensure. She will also address the questions on the issue in general which were raised in the first hearing. She would also like **Michael McPeck** from the Attorney General's Office to review the changes that the Criminal Division have helped generate.

Several changes were made to the definition of "wholesale licensing requirements" and "restrictions on transactions" of **SB 1184**. The changes were a result of discussions with the Idaho Retailer's Association and can be described as technical or language clarification. A new section, a severability clause, was added to the end of the legislation at the suggestion of the Attorney General and of the Board of Pharmacy. There is also an amendment on page 6 at line 47; we inserted a section to expressly permit the Idaho Board of Pharmacy to contract with a National Accreditation. Many states have opted to use the National Association of Boards of Pharmacy accreditation service to implement the enhanced wholesale licensure requirements. The verified accreditation wholesale ("VAW") distributors program provides states with an alternative to implementing their own process. VAW takes the burden and the cost off the State Board of Pharmacy. The VAW accreditation process verifies all state licenses are in good standing, ensures all

financial and criminal background checks are done, performs onsite visits and inspections and handles all application requirements. The cost for VAW licensure and accreditation process is borne by the applying wholesale distributor, not by the State. With respect to fiscal burden, it is **Senator Broadsword's** understanding that Idaho's current wholesale licensure process is funded by a modest fee that is charged to the wholesaler seeking licensure. It is also **Senator Broadsword's** understanding that the State Board of Pharmacy has the ability to change the amount charged for licensure. Therefore, any potential cost to the State can be addressed by appropriately changing the fee to address any cost changes, whether increases or savings. One other point worth noting, the states that have implemented similar legislation have seen dramatic drops in the number of wholesalers seeking licensure. At the Committee's first meeting, the question was raised about the pharmaceutical manufacturer's responsibility to protect the integrity of their product. **Senator Broadsword** would like to share some of the information on the industry's efforts to date. Manufacturers protect their product in normal distribution channels by restricting business with wholesalers that qualify to be their authorized distributors of record ("ADR"). For example, there are approximately 6,000 wholesalers nationwide, and Pfizer, for example uses 35 of those ADR's. In order to be a Pfizer-approved wholesaler (and she is using Pfizer as an example because that company has been instrumental in helping her come up with this information) a company has to be able to comply with Pfizer's terms of sale and show that they can distribute the product through normal channels. They carefully evaluate these ADR's to protect the integrity of their product. The normal distribution process is not where the counterfeit products are getting into the supply chain; it is in the lateral wholesale process where the problem occurs. One other point worth making: with respect to responsibility of the industry, technology development is being financed and field tested by the manufacturers and wholesalers including current ongoing pilot projects to further address the counterfeiting problem. For example, Pfizer has been working on more immediate ways to protect their product by employing color-shifting ink on their labels. It is like the holograph on a VISA card; it changes as you move the package from side to side. McKesson, one of the three big wholesalers, claim they have spent about \$4 million on these efforts in Florida alone. Florida is one of the hotspots for counterfeit drugs to come in to the United States. The State does not track e-pedigrees, but they are used by law enforcement to track the footprint if an illegal drug makes it into the system then they can backtrack it. Although the e-pedigree is still in development, it is worth noting that they are working on it and it may be coming forward in the future.

Michael McPeck, Deputy Attorney General in Contracts and Administrative Law Division and acts as general counsel for the Board of Pharmacy. At the last hearing on this particular subject of legislation, a request was made that the Board of Pharmacy, Pfizer representatives and a representative from their office need to see if an agreement could be found on a way to address concerns that were raised at the last hearing concerning the criminal penalties phase. That was done. Two basic approaches were taken: one was to fix the intent requirements so they

comported with Idaho law. The second was to obtain a sense from the particular interested stakeholders that were pharmacy representative, Mr. Marcus, and the Pfizer representative from their national governmental relations office as to how they wished to sanction criminal conduct resulted in a three-tier penalty system having to develop legislation that creates two classes of felonies and it creates a misdemeanor category. Because there were two specific references to administrative actions, it was felt important to put a section in to make it clear that those were not the exclusive administrative penalties that the Board had the authority to conduct thorough administrative proceedings. Also within that section it makes clear that an administrative penalty does not preclude criminal actions.

Senator Kelly asked if the Attorney General's Office Criminal Division participate in this, and if they were supportive of the penalties. **Mr. McPeek** responded that they received input from the criminal division as to how to structure the statutes so they would have the right requirements in there and accomplish the goal of the stakeholders. Their office does not take a position as to the merits of the particular sanctions that are adopted. They are more the role of saying this is what people wanted to achieve and this is how it could be accomplished. **Senator Kelly** asked if the lead prosecutor in the state did not want to take a position whether or not the sanctions in the bill are appropriate for the criminal acts that are alleged in an action. **Mr. McPeek** responded that their office has not taken a position on the merits of those penalties. This is a matter that was of concern to the Board of Pharmacy and to Pfizer as to the significance of the nature of the conduct they were trying to address in the bill.

Senator McGee asked if **Mr. McPeek** had a much higher comfort level with this legislation. **Mr. McPeek** responded that is correct.

Mark Markuson stated they were able to resolve the issues that were in the bill originally. Most counterfeit drugs are highly popular, so they are a high-mover and in very much demand drug. The other part of this for these adulterated and misbranded drugs are drugs that are very expensive and designed to take care of very special patients. There are some cases out there they have seen, not particularly in this state but other states where young patients, organ transplants and so on, where these drugs are very critical to their well-being if encountered.

Chairman Lodge stated that her doctor told her recently that he had prescribed some medication for a gentleman and it was not good; there was nothing in the prescription and the pills were sugar. She knows that is still happening and that has happened within the last few months here in Boise, Idaho.

Senator Kelly inquired about the VAUD program. **Mr. Markuson** stated that they use VAUD right now. They find that a number of wholesalers and distributors in other states are not being inspected in their respective states. They inspect everything that is under their jurisdiction in this state and they are finding a number of states where distributors or wholesalers

are not inspected. VAUD is an inspection process through the national boards with trained inspectors that will go in and do that for these facilities. What they recommend is wholesalers get a VAUD inspection and they will accept that; so they are using that system right now. The other process is RFID, which is radio frequency identification of products. This is very expensive and used in some instances, but it is not in this bill.

Senator Werk asked about the fiscal note from last time saying there would be no impact. He questioned whether or not they are going to have the personnel and financial wherewithal for a pharmacy to be able to institute and track and do all the things that were required in the legislation. He asked if they will be able with current staffing levels to do what is required in this legislation. **Mr. Markuson** stated they will not know exactly what that impact is, but it has been addressed in this bill. On the back of the new bill there is a fiscal note indicating there would be no fiscal impact on the State's general fund because they do not operate on general fund money. No fiscal impact is anticipated on dedicated funds due to the ability of the Board of Pharmacy to either raise licensure fees for wholesalers or use existing accreditation funding. As far as using existing funds, an existing accreditation body refers to VAW. There is a lot of information that is required if this goes into effect as far as fingerprinting, background checks, employment histories and so on, plus bonds that have to be posted and the separate accounts needing to be established for bonds, etc. There will be some impact to them in some way when this goes into effect.

Senator Werk asked about where in the statute their authority resides and what their fee limits are. **Mr. Markuson** stated they do have fee schedules for all their licensees and wholesalers are among them. They charge \$100 for a licensure for a wholesaler or distributor at this time. He looked at states throughout the country and they vary from \$75-\$1,000. . . Currently 23 states have legislation similar to this. Oregon just put their fees in place. Their license fee is \$400

Senator Kelly asked does the Board of Pharmacy have a position on the bill. **Mr. Markuson** replied that they did not take a vote or take a position on it at that time. **Senator Kelly** asked about page 9 lines 20-25, saying the Board may oppose one or more of the penalties provided for in section 54-1728. Asked for clarification. **Mr. Markuson** stated that their limit at this time in that statute is \$2,000; that is the most they could fine per count on a case they might have. If they had a disciplinary action their limit is \$2,000 per violation.

Senator McGee asked if the Board of Pharmacy opposes this legislation. **Mr. Markuson** said the Board did not say they opposed it.

MOTION:

A motion was made by **Senator Bair** to move S 1184 to the Senate floor with a do pass recommendation. **Senator McGee** seconded the motion.

Senator Broadsword stated that one of the pharmacists in her district from Osburn, Idaho ended up with a counterfeit prescription in his pharmacy. It is a problem in Idaho and one she feels needs to be

addressed, sooner better than later.

The motion carried by **voice vote**, with **Senator Kelly** being recorded as voting no.

S1158

Senator Jorgenson apologized for the way this bill was introduced the last time; it was a misunderstanding. One of the sponsors from the House could not make it and he was not aware that it was being presented, and he accepted responsibility for that. In the meantime, Alex LaBeau from IACI introduced the bill and while he did a valiant job, **Senator Jorgenson** is better prepared now because he has done most of the work on this. **Chairman Lodge** apologized for not ensuring his name was on the previous agenda. **Senator Jorgenson** stated S 1158 does not create anything new, except to penalize the employers who are knowingly and willfully hiring undocumented aliens. It is already illegal to hire them, and this bill would specify that if an employer knowingly and willfully hired an undocumented employee, then that employer would be responsible for any medical cost that was sustained as the result of employment. What that does is set up a new cause of action that could in fact be helpful to the county hospitals, or the counties. Right now there are provisions for payment of medical costs by way of workmen's compensation. Those workmen's compensation dollars do not come from Heaven; they come from employers and ultimately taxpayers. There are discussions on the part of the Workmen's Comp board to come up with a fund for nonfunded or registered employees. The penalties that an employer might face at this point are frankly incidental. The intent of this bill is to penalize the person who breaks the law, and that is the employer. He discussed the Alien Verification Initiative Program Summary. If implemented, this plan will send a strong message to the public that illegal immigration is not tolerated in Idaho, thereby urging other businesses in Idaho to follow the State's lead in hiring only legal workers. The State has taken the position that every single person who is hired by the State will be run through this program or the vehicle of this program. That vehicle is what we call the Systematic Alien Verification for Entitlements ("SAVE") program. There are two parts of the SAVE program. One part is to address the issues of state employment verification, state contractor verification, Health & Welfare benefit verification, unemployment insurance verification, correctional actions and public education. This bill only deals with the employment side. This is not asking any business to do anything that the State is not doing. The State is requiring that any of its vendors use this and the State is encouraging all businesses to use this program. The benefits of this program are it costs no employer a single cent to use; it is free and offered by the federal government. The State of Idaho has been using this program for nearly three years. If an entity does not have a computer program they are still obliged to comply with the law. The computer program is nothing more than an additional benefit that would make verification easier. The INI's still have to be completed on a manual basis, so this is a win-win program. **Senator Jorgenson** and **Senator Darrington** went over to the Dept. of Health & Welfare to check out this program, and it was impressive. This program is put together by Homeland Securities, the Social Security Administration and also U.S. Citizens and Immigration Services Bureau. It is a combination of three

federal groups that have a database that provide this information free of charge. When the information is entered on the program it essentially validates the authenticity of the ID's that are provided, and does it instantaneously. It does not say that these people are going to be arrested or turned over; they will simply be denied benefits. In a case of employment, it gives the employer a safe haven if they have gone through this exercise and attempted to verify the ID's.

Senator Coiner stated he appreciates the information on the SAVE program, but asked how that pertains to the merits of the bill. **Senator Jorgenson** said the SAVE program becomes the vehicle for the bill to be utilized. It is a reasonable bill put in place because these assets or resources are in place to check out the verification of an unfavored alien at no charge. **Senator Coiner** asked about line 14 "in good faith" relies upon documentation, so asked where the need is for this legislation.

Senator Jorgenson stated the need is to send a message to employers that would choose to try and elude the workmen's compensation program and hire illegal workers. **Senator Coiner** asked if there are vast numbers of people out there willingly hiring illegal people and willingly not paying workmen's comp, or willingly ignoring the law? **Senator Jorgenson** stated there is a specific example going back a few years, and pertains to how this might be enforced. A number of years ago there was an undocumented alien and his family, outside of Burley or Rupert, who was critically injured in a farm accident. He lost three of his limbs. He was not covered by the workmen's comp in the way we would hope, and the State of Idaho had to send him to Utah to be cared for and care for his family as well. **Senator Coiner** stated that accident was over 10 years ago, and before we had workmen's comp for farm workers. Right now any employer in the agricultural world has workmen's comp, everybody else has workmen's comp, their employers are covered if they are ignoring the workmen's comp. **Senator Jorgenson** stated these programs have been established because there is an undocumented alien problem with respect to taking legitimate jobs. There are federal programs. The State has adopted these programs. **Senator Coiner** stated the program is good for advertising the SAVE program to document people or to aid in helping that, but the legislation deals with employers and adding responsibility on employers. It is just a tool to use those programs. If it was something that would promote the use of that program, that would be good, but objected to putting responsibility on employers that willingly do this. **Senator Jorgenson** stated he understands, but many of his constituents do, and he is here to represent his constituents. **Senator Coiner** asked for any documentation rather than hearsay about these undocumented workers, or documented cases. His business employs several people every year, and go through checking through their documents to the best of their abilities, and also pay workmen's comp on them so that if they do get injured they are covered by workmen's comp. **Senator Jorgenson** stated that this will not penalize the honest employer. It is going to penalize the person who knowingly and willfully circumvents the system and workmen's compensation dollars are not free; employers pay for it and taxpayers pay for it.

Senator Broadsword asked about this legislation targeting the bad

employers, and asked if our workmen's compensation laws already provide a tool to penalize those employers who do not buy workmen's compensation for their employees. **Senator Jorgenson** stated workmen's comp does have a provision to cover people that are undocumented and employers that have not paid the premium. This would give a new cause of action to county hospitals to recover their full losses or charges. **Senator Broadsword** stated she asked if there is already in the workmen's compensation law a tool or a method for penalizing these employers. **Senator Jorgenson** stated there is a provision, and it would put the responsibility on the person who knowingly and willfully avoided the law and those workmen's comp dollars are there to be paid on a limited basis, but they are not free dollars.

Senator Werk asked that if he were to pass by a corner and pick up five guys and bring them out and pay them under the table and somebody gets hurt, how can anyone prove he employed these people? **Senator Jorgenson** stated this is not a law that would be enforced by policing; it would be a law that would be enforced by a worker who has been injured and forced to go to a hospital. **Senator Werk** asked that if he is the worker that is injured and is taken to the hospital, either the county indigent fund picks it up, or the hospital takes the loss, or somebody else takes the hit because he doesn't have the money. As that injured worker, he has no cause to want to go after the employer because he's not out anything. The only people who are out would be the counties or somebody that picked up the cost of that care, and how would anyone verify that this person was employed at this field for this purpose by this individual. **Senator Jorgenson** stated that if an accident of that nature occurred, there would no doubt be a police report, there would be a medical accident report and as far as a cause of action, it is not intended to benefit the illegal employee. The cause of action essentially would be extended to the hospitals to sue for their damages and the body that would be held responsible is the employer.

Mr. Vasquez stated he would like to read a statement then direct his focus to the issue at hand:

As you may recall, in May of 2006, 5,000 illegal aliens and their supporters marched through the streets of Boise and stopped at the steps of this very Capitol building. I am sure that there are other nations with citizens illegally in this country, but let me point out that only the Mexican flag flew over sovereign American soil on that day, at least in Boise, Idaho. I recall that vividly, as I was the only elected official in Idaho to take a stand against the invasion forces of Mexico's illegal aliens. I had to wonder how much of an economic impact did agriculture suffer that day with all those workers out in the field not doing the work some claim Americans won't do. And while I did not see **Senator McGee** taking a stand that day, I am pleased to see him pick up S 1105, which I presented to this Committee in 2005, but was held in committee. **Senator McGee**, however, I do commend you for moving this bill forward, and I believe it is a step in the right direction, no matter who gets the credit.

Commissioner Vasquez said last year when this bill was taken, there

was a question about who would pay for the medical care of those injured on the job. The answer was, of course, worker's compensation. My point is that worker's compensation, as **Senator Jorgenson** indicated, is money that is generated by Idaho taxpayers. The question as to how do you identify all these illegal aliens; you simply have to go to the county commissioners and ask them for the indigent welfare hearings because illegal aliens identify themselves as illegal aliens. They also identify where they worked. So I believe that answers two questions about where do you find them and how do you identify where they work. Also **Senator Werk** asks well how do you prove that they work there? If they tell you that's where they worked, then you know that. So you can then follow down that trail and go after that employer for the medical costs and care of the illegal aliens he employed at the expense of every other taxpayer in the state of Idaho.

Senator Werk referenced the example of being picked up on street corner, paid with cash under the table; how does the county move forward in trying to apply this to an employer that circumvented every piece of the employment process.

Commissioner Vasquez stated that if you go after the employers that you can identify, it will be far less likely that anyone would be picking someone up on the street corner.

Jeff Mocher lives in Meridian. He came here 31 months ago from Sun City, Arizona, and has a problem understanding what is it that politicians and news media don't understand about the word illegal. It seems like this word just doesn't exist in our vocabulary anymore. In December 18, 2005, the *Idaho Press Tribune* wrote an article by Ben Fletcher that said Canyon County is a safe haven for illegal immigrants. He has written many letters, in fact, he wrote yesterday's immigration article, and it was dissatisfaction over coming to this meeting the 19th of February. He does not understand – illegal alien is against the law, and we're having these problems with people trying to figure out. He writes the Idaho Bureau of Homeland Security once a month every month and he gets nothing. Getting to the bill – you can call Social Security office and find out if somebody's illegal or not. It's so simple; you can call the fraud lines.

Senator Kelly asked **Senator Jorgenson** if the Association of Counties or the Hospital Association indicated that they want or support this bill. **Senator Jorgenson** stated that neither one has, but he can say that he has worked with IACI, the Farm Bureau, and the Dairymen. The Farm Bureau and Dairymen have taken a neutral position and IACI believes that honest employers should abide by the law. **Senator Kelly** clarified that what Mr. LaBeau said when he when here last time was that they found language that they could not object to. She does not think that means they support the bill. **Senator Jorgenson** stated that they did provide a great deal of assistance. He said this bill neither discriminates or singles out any particular type of illegal alien; they could be Mexican, they could be Irish, they could be anything.

Senator Coiner commented on workmen's comp and the taxpayers

picking up the bill; workmen's comp is paid for by employers. Employers have that responsibility to pay. It is not taxpayer funds that are going into that. **Chairman Lodge** stated that is a true statement.

MOTION:

A motion was made by **Senator Coiner** to hold S 1158 in Committee. **Senator Kelly** seconded the motion.

Senator Broadsword stated there are many other ways to market the SAVE program besides putting it in code. Even though the intention may have been very good, she cannot support this legislation as written, so she will support the motion.

Senator Hammond stated that he does not have as much experience with this issue as others, but does appreciate the good Senator's concern and personally would like to see it out on the floor for further discussion, and intends to vote against the motion.

Roll call on motion to hold the bill in Committee:

Senator Kelly: aye
Senator Werk: aye
Senator Hammond: no
Senator Bair: aye
Senator Coiner: aye
Senator McGee: no
Senator Darrington: no
Vice Chairman Broadsword: aye
Chairman Lodge: no

The motion carried.

Chairman Lodge stated that in the Committee's packets there is an email from Jean Gunderson of the Public Health on the West Nile, and also a protectee's video that has been produced by the Attorney General on internet sexual predators. Also she needs some sponsors for H 158 and HJM 1. **Vice Chairman Broadsword** will carry H 158 and HJM 1 will be held until we find a sponsor.

Chairman Lodge adjourned the meeting at 5:19 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 7, 2007

TIME: 3:05 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: None

GUESTS: See an attached sign-in sheet.

CONVENE: **Chairman Lodge** convened the meeting at 3:00 p.m.

MOTION: **Senator Bair** moved to approve the minutes of the meetings held on January 30, January 31, and February 1, 2007. **Senator Hammond** seconded, and the motion passed by unanimous **voice vote**.

HCR 19 **Relating to Rejecting Certain Rules of The Division of Vocational Rehabilitation Pertaining to Standards Governing Extended Employment Services**

Representative Bob Nonini discussed bringing **HCR 19** to this meeting. **Chairman Lodge** stated that the Committee has not heard these rules before, and she will ask that **HCR 19** be sent back to the floor for reassignment. **HCR 19** will be redirected to the Senate Education Committee.

MOTION: **Senator Darrington** moved that **HCR 19** be sent to the floor without recommendation, **Vice Chairman Broadsword** seconded, and the motion passed with unanimous **voice vote**.

H 166: **Relating to Medicaid**

Representative Russ Mathews presented the rationale for **H 166**. The State of Idaho has not instituted an independent, certified Medicaid Fraud Control Unit. Federal funds are available for 90 percent of the cost for the first three years and 75 percent of the cost each year thereafter. **Representative Mathews** noted that there have been few cases of fraud investigated in recent years, demonstrating a need for this fraud control unit. The unit would be staffed with very specialized professionals, including two attorneys, two investigators, two auditors, a paralegal, and a legal secretary. It would give to the Office of the Attorney General and prosecuting attorneys authority to prosecute Medicaid fraud. The cost of creating a separate certified Medicaid Fraud Unit within the Criminal Division of the Office of the Attorney

General is estimated to be \$75,000 from the General Fund and \$675,000 from federal funds. The fiscal note does not project any recoveries or savings due to the deterrent impact of the unit.

Representative Margaret Henbest, one of the sponsors of **H 166**, provided information about the process of paying for providers and negotiating costs with providers. **Representative Fred Wood**, another sponsor of **H 166**, spoke favorably regarding this bill. He said that fraud can be in the form of upscale billing or transferring services to ineligible recipients. This legislation deals more with the providers than the recipients.

Representative Scott Bedke provided background information on some of the federal statutes relating to Medicaid providers and fraud. He submitted that we are not governed by the agencies but by law. There was a lengthy discussion between Committee members and sponsors of the legislation regarding Medicaid fraud and statewide coverage of the cases.

TESTIMONIES:

Mr. Steve Whitewater commented on prosecution measures and the necessary authority to investigate. As **Representative Mathews** pointed out, no cases of fraud were filed in Idaho last year, and it is apparent that there is a need for this fraud unit. In response to questions from **Senator Kelly**, **Mr. Whitewater** gave clarification to administrative proceedings.

Mr. Scott Burpee, CEO of Idaho Health Care Association (IHCA), Valley Vista, expressed opposition to **H 166**, and discussed business records retention. He said there is a need to discuss in the Office of the Attorney General specifically what is considered business records and what would be subject to audit. The health care organizations don't know what to keep, what to destroy or what type of records would be needed in an investigation.

Chairman Lodge asked **Mr. Burpee** if the agency is investigating fraud and abuse of Medicaid payments or if the agency is investigating abuse and neglect of patients that cannot be addressed by Health & Welfare.

Mr. Burpee explained how difficult it is to conduct the investigations.

Mr. Robert Vande Merwe, Lobbyist for IHCA, stated his group is opposed to **H 166** because portions of the bill specifically target "board and care homes" which means nursing homes and assisted living. He said that although they met with the sponsor after it was introduced in the House, they were not involved with the development of this bill, even though they are specifically mentioned in it. He said that keeping Health & Welfare involved in the investigations is critical and requested the bill be sent to the amending order.

Mr. Keith Holloway, CEO, IHCA, testified in opposition to **H 166**, and described their objections to certain sections of the bill.

Mr. Pat Collins, Lobbyist, IHCA, said his group opposes **H 166**. He

presented a lengthy discussion and stood for questions from the Committee. The Committee heard discussion about proper evidence for fraud cases, checks and balances, and excess controls. **Vice Chairman Broadsword** referred to certain sections of the bill relating to supporting documents.

MOTION: **Senator Werk** moved to send **H 166** as amended to the Senate floor with a do pass recommendation. **Senator McGee** seconded the motion. After further debate from **Senators Darrington, Bair,** and **Broadsword**, the motion carried by **voice vote**, with one opposing. **Chairman Lodge** complimented the Committee and all those who testified or contributed to the work on this legislation.

H 238: **Relating to Health Quality Planning Commission**

MOTION: After hearing the rationale for **H 238**, **Vice Chairman Broadsword** moved to send **H 238** to the Consent Calendar, **Senators Werk** and **Hammond** seconded. The motion passed by unanimous **voice vote**.

H 147: **Relating to District Boards of Health**

Representative Thomas Loertscher presented the rationale for **H 147**.

MOTION: **Senator Hammond** moved that **H 147** be moved to the Consent Calendar, **Vice Chairman Broadsword** seconded, and the motion carried by unanimous **voice vote**.

H 165: **Relating to Birth Defects from Alcohol**

Representative Liz Chavez presented the rationale for **H 165**, which provides that there will be a warning to the public that consumption of alcohol during pregnancy can cause birth defects. She described the printed materials as decent and eye-catching.

Representative Sharon Block spoke in favor of **H 165**, citing her experience as a teacher who has worked with children who exhibit symptoms of fetal alcohol syndrome.

TESTIMONY: **Ms. Pam Eaton**, President of the Idaho Retailers Association (IRA), testified regarding **H 165**. The issue is very important and they do not disagree that the effect on children is serious. They do disagree with the method of using the signs and discussed the reasons behind their objections. Doctors offer advice to women on their first visit during pregnancy, but that varies by doctor and some women do not even see a doctor in the early stages of pregnancy. **Senators McGee** and **Hammond** continued the discussion with **Ms. Eaton**.

Ms. Terry Pappin, Specialist for Department of Health & Welfare, spoke in favor of **H 165**, stating it is important legislation for Idaho's future. **Vice Chairman Broadsword** discussed with **Ms. Pappin** the placement of brochures and printed materials in places that would assure this message would be seen. **Chairman Lodge** asked where a sign like this might be placed in a high end restaurant, for example. **Representative Block** suggested it could be placed on the inside of the door to each of

the rest rooms.

MOTION: **Vice Chairman Broadsword** moved that **H 165** be tabled. **Senator Bair** seconded. **Senator Werk** expressed concern about seeing women who are expecting babies drinking alcoholic beverages and smoking even knowing what we know today.

SUBSTITUTE MOTION: **Senator Coiner** made a substitute motion that **H 165** be sent to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Werk**. **Senator Darrington** commented that possibly the best thing to do is to get the education out so more people are aware of the risks to unborn children. **Senator Hammond** said he is not convinced this will make a difference to the people who just choose not to listen or care. **Senator Broadsword** said this bill would help educate people who have not thought about the risks. The motion to send **H 165** to the floor with a do pass recommendation failed by **role call vote** with 3 in favor and 7 opposed.

The motion to hold the **H 165** in committee passed by **voice vote**.

DISCUSSION: **Senator Lodge** suggested that the balance of the agenda be finished at the next meeting and that **Representative Block** be invited to the next meeting, which will be scheduled for Monday.

ADJOURNMENT: **Chairman Lodge** adjourned the meeting at 5:58 p.m.

Senator Patti Anne Lodge,
Chairman

Joy Dombrowski,
Secretary

Sandra Boyington,
Assistant

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 12, 2007

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: NONE

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

RS 17181 **Senator Goedde** would like unanimous consent to send this RS to Judiciary & Rules Committee for reconsideration. **Senator Goedde** explained this is the Pan Handle Health District Rules passed earlier this session.

Senator McGee asked if **Senator Goedde** knew anyone who would oppose this action. **Senator Goedde** said he assumes the Pan Handle Health District would like to see them go through as they are.

Senator Goedde explained the problem is the additional cost to provide septic systems for very large houses with not very many occupants. Currently the number of bedrooms in a home is used to calculate the amount of sewage that a home might anticipate, thus the size of the system. The complete basis of calculation is being changed from bodies to square footage.

Senator Kelly is concerned this was not on the agenda and feels uncomfortable acting upon it with little knowledge. **Chairman Lodge** explained this is unanimous consent to send to Judiciary & Rules (a privileged committee) to have it discussed there.

Senator Darrington said this subject used to be a hot topic. He is concerned when Health District Rules were reviewed this session, there was no discussion on this issue. He explained the discussion has to be held in this committee and Judiciary & Rules would simply do the mechanics to move the issue along. **Senator Darrington** suggested a short hearing or process so this committee has some understanding of this rule before making a unanimous request.

It was decided to put RS 17181 on the agenda for Wednesday's meeting.

H 159

Relating to Health Care, Idaho Community Health Center Grant Program. **Senator Keough** passed out a handout and presented this bill. This bill creates a Community Health Center grant fund. Community Health Centers are nonprofit organizations that provide primary and preventative medical services to uninsured or medically needy across the state. There are 10 of these centers in Idaho.

Vice Chairman Broadsword asked how these grants would be funded. **Senator Keough** said the appropriations are at the end of their process and there does not appear to be any money currently for this grant program. However, it's important to put this structure in place. Should the opportunity for the funds become available the framework is in place.

Senator Keough explained there are federal grant sources, federal funding and federal appropriation dollars that these clinics receive. Some of the federal dollars are on a competitive grant process and there are locally raised donations as well. **Representative Henbest** mentioned these clinics also receive payments from patients on a sliding scale basis. A certain percentage of their patients are on Medicaid, therefore, they receive reimbursement from Medicaid or Medicare.

Senator Bair noted he visited one of these clinics and was very impressed. He thought it was well run and staffed. His concern is these clinics becoming dependant on the state.

Senator Werk noted there is a lot of small medical free clinics. Why narrow the scope and cut out those little health clinics that are trying to make things better in their communities. **Senator Werk** said he is the chairman of the board of a small free clinic. **Representative Henbest** said the purpose was not to narrow just to the federally approved health centers, but to try not to open it up to profit making funds.

Representative Henbest said from their granting to the Caldwell clinic, to Terry Reilly, in three months they saw 1,244 new patients. This put them on a target to exceed their 3,375 patient encounters in FY07. In the Terry Reilly Expansion 68% of the patients are uninsured. This is significantly higher than the average across the state.

F. Fred Glemser, long time resident of Adams County, Council, Idaho in real estate business and Chairman of the Board of Adams County Health Center spoke in support of H 159. They have nine volunteer board members. **Mr. Glemser** said they need money from the state in support so they can have a proper running health care system.

Dr. Leanne Rousseau, Medical Director of Dirne Community Health Clinic in Coeur d'Alene said they carefully screen their patients to make sure they are income qualified. She said community health centers provide comprehensive health care to the underserved. She mentioned the uninsured problem is not going away, it is getting worse. **Dr. Rousseau** said it is critical to control costs. Community health care centers collaborate with the communities and develop supports with the communities and the government. She believes a minimal investment in

this system will pay back dividends in the long run. Last year her clinic saw almost 20,000 patients.

Dr. James Schroeder PA-C, CEO of Family Health Services, Twin Falls, said they have clinics in Jerome, Buhl, Twin Falls, Rupert, Burley, and Fairfield. He started there in 1994 as a student. In 2006 they had about 20,000 patients and 80,000 patient visits. In response to **Senator Bair's** concerns of federal dollars, when **Dr. Schroeder** started at the health center their federal dollars were about 75% of the budget, now they are down to about 30%. The idea behind the grant funds is not to provide operating cost that would require ongoing support, thus getting them trapped in that once they get money, and not be able to support it each year. The idea is to take the infrastructure they already have, and add to it. He would like to add dental equipment in Jerome and Twin Falls. **Dr. Schroeder** supports H 159. He says they do maximize their resources very well, they are good at leveraging and collaborating. They get approximately two million a year in federal money and run a ten million dollar budget.

MOTION:

A motion was made by **Vice Chairman Broadsword** to send H 159 to the floor with a do pass recommendation. **Senator McGee** seconded the motion.

Senator Hammond mentioned the way this is structured as a grant for a particular capitol project and not for ongoing operations, it's safe that a dependency would not be created.

Senator Darrington seemed to disagree. He feels as this bill is voted on, the committee needs to understand that, it won't be funded this year, however, if we pass the bill it will be funded in the future, and a constituency for continued funding will be established.

The motion carried by **voice vote**.

HCR 15

Representative Henbest explained this resolution will permit families of minor children with developmental disabilities a different way of receiving services. The services would be based on need as determined by a child-centered, family-directed plan and would cost no more, on average, than the present costs for these services for the same number of children. The \$49,500.00 for this resolution will be reallocated by the Department of Health and Welfare.

Chairman Lodge noted there were several people to testify in support of this resolution.

MOTION:

Senator Werk made a motion to send HCR 15 to the floor with a do pass recommendation. **Senator Coiner** seconded the motion.

Senator Hammond questioned the allocation. **Senator Werk** explained this is not additional money. The departments have committed to shuffling the monies in order to be able to participate with this task force.

The motion carried by **voice vote**.

HCR 21

Representative Luker explained HCR 21 rejects the rules of Idaho Child Care Program (ICCP). The eligibility requirements were based on time lines from 1998. The Office of Performance Evaluation, legislative auditors and Child Care Advisory Board made some recommendations to Health & Welfare that the eligibility requirements be brought current.

Representative Luker said this is the bill he received the most email on. Under the current rule students are eligible for up to four years of child care programming assistant, assuming they meet the other eligibility requirements. This rule would reduce that to two years, and interject a ten hour a week work requirement. All the university representatives and people that received the benefit of this child care program, during university time were concerned with losing that benefit. The task force felt if they trained somebody they shouldn't need these funds anymore. If other people out there are receiving them as a general course they are going to be there for awhile. The idea is to put the benefit where they can help people and get them off the program.

Vice Chairman Broadsword said this committee chose to reject only a portion of that rule. They felt there was some validity in some of the changes. She mentioned this is temporary assistance for needy families, for working families, not for someone to go to college. That was an added benefit.

Senator Darrington explained this is a pending rule. It would take an affirmative action by both houses of the legislature to reject a pending rule.

A discussion followed, trying to recall what was done regarding this issue. **Chairman Lodge** said there is going to be a committee working throughout the interim on this issue.

MOTION:

A motion was made by **Senator Hammond** to move HCR 21 to the floor with a do pass recommendation. **Senator Werk** seconded the motion.

SUBSTITUTE MOTION:

Senator Broadsword made a substitute motion to table HCR 21. Due to lack of a second the substitute motion failed.

Senator Broadsword said if the committee accepts the original motion, that rule goes back to the 1998 poverty level. She said the committee discussed they wanted this rule to come up to 2005 level. By accepting this resolution we are undermining what she thought the committee felt was the right thing to do.

Chairman Lodge said she believes the House trumped whatever this committee sent to them and redid the whole resolution.

Senator Hammond said the committee heard good testimony from the Department of Health and Welfare and they were adamant this rule needed to be in place. He would like to hear from the Department why, or if they agreed to this. **Chairman Lodge** said she believes the Department's concern was by going to the 2005 poverty level there would be more people eligible for the same money and the child care

program would run out of money before the end of the year.

**ROLE CALL
VOTE:**

Those voting aye for HCR 21 to go to the floor with a do pass recommendation were **Senators Kelly, Werk and Hammond**. Those voting no were **Chairman Lodge, Vice Chairman Broadsword, Senators Bair, Coiner, and Darrington**. The motion **failed**.

MOTION:

A motion was made by **Senator Coiner** to hold HCR 21 in committee, subject to call of the **Chair**. He suggested working together to work this out and come to a conclusion. **Vice Chairman Broadsword** seconded the motion. The motion carried by **voice vote**.

HCR 20

Representative Luker explained this resolution is from the Board of Nursing, Administrative Rules rejecting a subsection to do with the disciplinary provisions of the rules. This subsection deals with the failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a board investigation by willful representation of facts and failure to provide information on request of the board. The reason for concern is 1) the particular information is broad, and 2) failure to cooperate with authorities, and the fact that the nurse could be disciplined.

Senator Werk asked if the reasoning for this rejection is to better define what information could be asked, that if not complied with, could lead to a disciplinary action. **Representative Luker** said that was a large part of it. The other part is to have some oversight on opposing discipline when you fail to provide.

Vice Chairman Broadsword asked if there had been a complaint about the Nursing Board that they are misusing their power in some way. She also asked if any nurses came and testified against this rule.

Representative Luker responded no. When this particular new rule was presented, there has not been an opportunity. They are trying to strike a balance to protect the right of the individual and provide information needed. He said he didn't believe there were any nurses there at the time.

MOTION:

Senator Bair made a motion to hold HCR 20 in committee until rules could be available. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

H 168

Representative Bilbao explained this bill proposed updating terms and references consistent with Deficit Reduction Act of 2005 and the federal government's approval of Idaho's Medicaid state plan amendments to modernize its program. The amendments specifically identify the Idaho Residency Programs as essential Medicaid providers.

MOTION:

A motion was made by **Senator Hammond** and seconded by **Senator Werk** to send H 168 to the floor with a do pass recommendation. The motion carried by **voice vote**.

H 119aa

Bill von Tagen, Deputy Attorney General and Co-Chair of Task Force created last year pursuant to HCR 40. HCR 40 asked the Office of Attorney General and the Department of Health and Welfare to come up with a form or structure that would replace the present “do not resuscitate” (DNR) order with a new system. This task force designated a new system. The physician’s orders for scope of treatment “POST”. H 199aa is the legislative part of the response to HCR 40. They also created a post form. H 199aa relates to medical consent, to health care decisions and process at the end of life. It really relates to the portability of the physician’s order, directing what treatment is to be given to a person for whom death is imminent. The POST form is signed by both the doctor and the patient or patient’s health care agent. HCR 40 identified a problem, when an individual has a DNR issued in their name, it is generally institution specific (if you leave that institution a new DNR is needed). The POST form does not replace a living will, although it does replace the statutes on DNR orders. While health care institutions may continue to utilize their own DNR orders within the confines of the institution, the POST form proposed by this legislation is intended to be portable. It is hoped that the POST form will become the standard DNR form.

Mr. von Tagen noted that if there is a conflict between a person’s living will and POST, the POST is going to govern, chances are the POST was issued after the living will.

Senator Darrington has concerns that DNR is crystal clear to the elderly, their children and everybody. There will be a tremendous responsibility to make the connection over to POST. **Mr. von Tagen** explained everyone thinks they know what DRN means, until they sit down and define their terms. To someone in the medical community a DNR is a very specific order that says in the event of cardio or pulmonary arrest I don’t want to be resuscitated. There are many people who assume you can put the initials DNR on the refrigerator and that means when the paramedics come in they won’t resuscitate you.

Bob Seehusen, Idaho Medical Association said the Association has worked very closely on this, and a number of physicians were involved. It is good legislation.

MOTION:

Senator Coiner made a motion to send H 199aa to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

INFORMATION:

Chairman Lodge invited **Dennis Stevenson**, Administrative Rules Coordinator, in for some guidance on the above legislation to be reheard on Wednesday.

With regard to RS 17181, **Mr. Stevenson** said he talked to Doug Conde, Department of Environmental Quality (DEQ) on whether this rule is more stringent than the DEQ rule. DEQ does not have a problem with these rules being more stringent because of the issue that is involved. In the Panhandle district rules, it talks about the water volume based on square

footage of a structure vs. the number of bedrooms. The issue seems to be the water capacity is based on the number of bedrooms in the dwelling. It specifically talks about one and two bedrooms, and three and four bedroom dwellings, one is a 900 gallon capacity vs. 1,000 for three to four bedroom. The Panhandle district moved that from the number of bedrooms in the structure to the square footage, based on 0.12 gallons per square foot. That would then determine the capacity. The Panhandle rule says whichever is greater is the one they are going to use.

Senator Kelly asked what is the status of this rule making with regard to the legislature and can this section of the rules still be rejected? **Mr. Stevenson** said as a body you can deal with the rule making process until the gavel falls. **Senator Kelly** feels in order to make an educated decision the committee should hear from the Panhandle Health District.

Vice Chairmen Broadsword said she was in the House committee and they also raised questions over this specific rule in the subcommittee. She didn't know what happened when it got to the full committee. She believes the committee should revisit this rule. Due to the lack of time, have a Concurrent Resolution drafted, just in case. **Mr. Stevenson** noted there is a Concurrent Resolution drafted.

A short discussion followed regarding how to deal with this.

With unanimous consent of the committee this bill will be heard on Wednesday, and if successful, sent to Judiciary and Rules Committee.

A discussion was had on how to deal with HCR 21. **Mr. Stevenson** said no action taken means the rule goes through, you have to affirmatively reject.

ADJOURNMENT: There being no further business, **Chairman Lodge** adjourned the meeting at 5:10 p.m.

Senator Patti Anne Lodge
Chairman

Arlene Mahaffey
Secretary

Barbara Davidson
Assistant Secretary

Note: Any sign-in sheets/guest list, testimony, booklets, charts and graphs will be retained in the Committee Secretary's Office until the end of the session. After that time the material will be on file in the Legislative Services Library (Basement E).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 14, 2007

TIME: 2:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

ABSENT: NONE

CONVENED: **Chairman Lodge** called the meeting to order at 2:00 p.m.

MINUTES: **Vice Chairman Broadsword** made a motion to approve the Committee Minutes of February 6, 2007 as presented. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

RS 17181C2 Panhandle Health Rules - **Senator Goedde**. **Senator Hammond** and **Senator Goedde** have been working with the parties, the RS will only reject 2 sections of the rule. Panhandle Health District has agreed to take the rule back, work on it through the summer with all the parties involved.

Senator Bair asked why switch away from number of bedrooms to square footage. **Senator Goedde** explained the people of Panhandle Health District feel square footage is a better determinate of potential waste flow.

Senator Kelly asked who is complaining about this now? **Jerry Mason**, Legal Counsel for the Health District said there is one realtor and one architect that he knows of. He said they have only known about this for the last 24 hours.

Vice Chairman Broadsword asked, if when **Mr. Mason** was here before, he expected to hear some complaints about the septic system changes, at that time. **Mr. Mason** said one never knows what is going to happen, he was surprised that the focus was on the institutional controls program the way it was. They had gone a long way to work with everyone they thought had a stake. He wanted to point out that they have agreed to the compromise.

Steve West, representing the Blackrock Organization said he was prepared to testify before the changes were made regarding the compromise. Because of his experience as a Regional Administrator with Department of Environmental Quality (DEQ) and Chief of Idaho Bureau of Health and Safety, he feels this is a bad rule, it does not provide a way to deal with calculating subsurface sewage disposal. He agrees with the compromise and wanted to note they have been working with the Couer d'Alene Property Owners Association, who felt they were left out of the process or did not fully understand the implications of the

change to a calculation of waste water subsurface flow based on a square footage of habitable space. They were contacted by other development organizations who also expressed concerns of their lack of involvement. He thinks that if the district had embraced the negotiative rule making process they may have been further along on a rule people could have supported. The compromise, would allow the engineering expertise necessary to consider the question more fully.

Senator Werk noted a letter that mentioned there were 23 hearings held on this issue. **Mr. West** said there were 23 combinations of presentations, invitations for comment and some public hearings that went into development of this rule in the 5 northern counties of Idaho. He feels a negotiated rule making process where impacted stakeholders would have the opportunity to participate in the negotiation and development of a rule is a much better way to come up with something that would ultimately make sense.

Senator Darrington asked if a waste disposal water rule like this goes into effect, does it apply only to permits sought after the effective, or to existing permits. **Mr. Mason** believes it would only be effective on new permits applied for after the effective date of the rule.

Senator Hammond said there is a challenge around the lakes up there because the soils aren't very deep. He stated the challenges of rule making and keeping everyone informed. As he sees it, this compromise is saying, okay you're late to the game, we will still try to work it out, you better get at the table, we do care about quality of the lake, we do care about the environment up there, if you've got some alternative solutions that can work for the development industry and protect the quality of our water and environment, we can be open to that. **Senator Goedde** totally agrees. This is a compromise, both sides agree to work on a solution and return next session with a new rule.

Senator Kelly addressed several questions to Jeanne Bock, including the mission of the Health District and rate of growth. **Jeanne Bock**, Panhandle Health District said their mission is to promote and protect health. She said they worked months on this, and with many people. The Panhandle Health District has a good reputation in their area of protecting the environment. With regard to this rule, their best intention was to include everyone. They now understand that wasn't enough. They want these lake properties, which are valuable, to continue to be clean and useful in the future. Regarding the rate of growth, **Ms. Bock** said she can't even keep up with the projected growth, she believes Post Falls is 47%. Their staff is besieged by confrontations regarding the bedroom issue vs. square footage daily, weekly, monthly. She is going back to face them and tell them for another year to be fair, equitable and uphold the rules as they are today.

Senator Coiner asked if this rule were left as approved, would **Ms. Bock** be willing to work to adjust this rule for the next six months to a year. **Ms. Bock** said they actually have a transition plan for permits going on. Their staff is already working to negotiate this plan to be fair and

equitable to the investor, homeowners, builders and still keep the right of clean use. **Senator Coiner** noted at this time he is unable to support this rule.

Senator Darrington asked how **Ms. Bock** who will handle the enforcement of this rule between now and next January? **Ms. Bock** answered they would continue to pour over plans that show 10,000 square foot home with two bedrooms and appropriately sized per regulation with septic systems and the drain fields that are in the regulations.

Mr. Mason said it was his understanding that if this Concurrent Resolution were to fail, then they would have to apply for a new regulation upon it's effective date. If this succeeds they would apply the existing regulations. Under either circumstance, they will talk with anyone who has an interest in this about revisions.

Senator Darrington said come next January this will be looked at much closer. There wasn't much discussion on that particular rule, if any. Now this has become a big issue. He is trying to figure out a way to avoid doing the resolution and still get to the same affect without getting into a mess.

Senator Hammond said we were focused on the upper basin and didn't even look at these rules. These rules have profound effect on North Idaho. They may be appropriate as proposed. If we are genuine about what we are here for, we will take a good look at it before we approve it.

Senator Coiner said it seems these negotiations for the next year could go two ways. You could negotiate from the old rules back to this year's rule, or if we don't do anything, this year's rule is in place and they can negotiate from that. If in the next three months they negotiate from the rule that has passed and do something, could they negotiate over the next two or three months to come up with a temporary rule that would then be somewhere in the middle of these two rules. **Dennis Stevenson**, Administrative Rules Coordinator said, yes they could.

Senator Broadsword asked how many permits were issued in the five northern counties in the last six months. **Ms. Bock** said possibly 1,000. **Senator Broadsword** noted very few of those are on lakes.

Senator Goedde closed by saying he thought there was a compromise here. The five northern counties are being put at risk. There was a system that worked, now we are changing the rules. There are some significant problems, there is no definition of square footage in the proposed rule and in another part of the code there is, it doesn't take into consideration closets and bathrooms. He believes there will be a lawsuit out of this, if passed the way it is. It should be fixed.

MOTION:

Senator Hammond made a motion to send RS 17181C2 to the Rules and Judiciary Committee for print. **Senator McGee** seconded the motion.

Senator Darrington said he was seeking a resolution and he doesn't think that solution is possible without bringing chaos to the Panhandle District. If they go without a resolution they have to enforce the rule on the books now, effective at the end of this legislative session. He is convinced we need to do a resolution.

Senator Kelly noted the Panhandle District went to an extensive public comment process in developing this. If they are sent back to the drawing board, she feels a message is being sent to them that they weren't doing what they were suppose to do. **Senator Kelly** thinks they were doing exactly what they were suppose to do. She can't support the motion.

Senator Coiner said he also cannot support the motion. He thinks if we go back to the old rule it would take them another year or two years to get back to negotiations where they are. If these rules need to be fixed that much, they can fix them in the next month, and have a temporary rule with their fixes in place to carry them through to get there.

Senator Darrington explained although there is not a written rule, there has to be unanimous vote out of this committee to go to a privileged committee. He said he doesn't believe his committee or State Affairs would print this resolution without that kind of commitment from the germane committee.

**ROLE CALL
VOTE:**

Voting yes to move RS 17181C2 to Judiciary and Rules Committee for print were **Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Bair and Hammond**. Voting no were **Senators Coiner, Werk and Kelly**. The motion failed.

Vice Chairman Broadsword said it would put her mind at ease if she had some feeling that the Panhandle Health District were concerned enough to go back and try to amend this rule and put a temporary rule in place that would meet a compromise. **Ms. Bock** said she would meet with her staff tomorrow.

H 34

Relating to Acupuncture - **Roger Hale**, Lawyer in Private Practice representing the Bureau of Occupational Licenses presented this bill and explained it is designed to revise license requirements, certification requirements, and amending to include engaging in conduct which violates the board's law or rules as a reason for suspension or revocation. He gave a little background.

MOTION:

A motion was made by **Senator McGee** to send H 34 to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

H 167a

Relating to Personal Assistance Services - **Kelly Buckland**, Executive Director for State Independent Living Council presented this amended bill. He explained this legislation clarifies the difference between a Personal Assistance Services Agency and a Fiscal Intermediary Agency. There are also some changes to make the administration of the Personal Assistance Services Program less complicated.

- MOTION:** **Senator McGee** made a motion to send H 167a to the floor with a do pass recommendation. **Vice Chairman Broadsword** seconded the motion. The motion carried by **voice vote**.
- H 155a** Relating to Nursing - **Representative Henbest** explained this bill is to establish the Nursing Workforce Advisory Council and the Nursing Workforce Center within the Department of Commerce and Labor. This Council will act as advisors to stakeholders on nursing workforce issues. The Workforce Center will investigate nursing workforce issues. This legislation is one of the recommendations of Governor Risch's Task Force on Nursing.
- MOTION:** A motion was made by **Senator McGee** to send H 155a to the floor with a do pass recommendation. **Senator Werk** seconded the motion. The motion carried by **voice vote**. **Senator Bair** voted no.
- HCR 20** Concurrent Resolution rejecting a certain rule of the Idaho Board of Nursing - **Representative Luker** said this resolution would reject a subsection of a pending rule of the Idaho Board of Nursing pertaining to Rules of the Idaho Board of Nursing. If adopted by both houses, this resolution would prevent this subsection of the agency rule from going into effect.
- MOTION:** **Senator Coiner** made a motion to send HCR 20 to the floor with a do pass recommendation. **Senator McGee** seconded the motion. The motion **failed**.
- HCR 21** Concurrent Resolution rejecting pending rules - **Representative Luker** explained this resolution would reject a pending rule of the Department of Health and Welfare pertaining to Rules Governing the Idaho Child Car Program (ICCP). If adopted by both houses, this resolution would prevent the agency rule from going into effect.
- MOTION:** A motion was made by **Vice Chairman Broadsword** to send HCR 21 to the floor with a do pass recommendation. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.
- ADJOURNMENT:** There being no further business **Chairman Lodge** adjourned the meeting at 3:30 p.m.

Senator Patti Anne Lodge
Chairman

Arlene Mahaffey
Secretary

Barbara Davidson
Assistant Secretary

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 16, 2007

TIME: 8:30 a.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Bair, Hammond, and Kelly

MEMBERS ABSENT/ EXCUSED: Senators Darrington, McGee, Coiner, and Werk.

CONVENED: **Chairman Lodge** called the meeting to order at 8:40 a.m.

MINUTES: **Vice Chairman Broadsword** made a motion to approve the Committee Minutes of February 19th & 21st, 2007 as corrected. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

APPOINTMENT: Appointment of **Travis Beck** to the Commission of the Blind and Visually Impaired to serve a term commencing February 1, 2007 and expiring July 1, 2007.

Mr. Beck is from Idaho Falls, married, and has a five month old son. **Mr Beck** is legally blind. He spent his education time in regular public schools and Idaho State University. He attended his first board meeting of the Commission of the Blind and Visually Impaired at the age of 16. He has had various work experiences and ran a cafeteria for the blind. **Mr. Beck** learned the vending machine business under the Commission and now owns his own vending machine business making him independent and a successful businessman.

Senator Hammond asked what **Mr. Beck** hoped to accomplish as a member of the Commission of the Blind and Visually Impaired. **Mr. Beck** said to help blind people be successful with their education and employment.

Senator Bair asked **Mr. Beck** if he is able to drive. **Mr. Beck** said, yes.

Senator Kelly asked about the challenges of attending public schools and what **Mr. Beck** thought would assist visually impaired students get through public school today. **Mr. Beck** said the School for the Deaf & Blind in Gooding did not fulfill his educational needs. He stated that public schools now have portable CCTC cameras and they assist the visually impaired student to succeed.

Senator Broadsword noted that **Mr. Beck** was appointed in February and asked if he had already attended some Board meetings and what his

impression of the Commission was, and if he hoped to continue after his term commenced? **Mr. Beck** said the Commission seems to be doing well, are addressing all of the important issues, and he does hope to continue after his term.

MOTION:

Senator Hammond made a motion to move to the floor the confirmation of **Travis Beck** to the Commission of the Blind and Visually Impaired. The motion was seconded by **Senator Kelly**.

Chairman Lodge commented that **Mr. Beck's** will be a very valuable member of this commission with his experience, education, great attitude, determination and family support.

The motion carried by **voice vote**.

ADJOURNMENT:

There being no further business, **Chairman Lodge** adjourned the meeting at 9:15 a.m.

Senator Patti Anne Lodge
Chairman

Arlene Mahaffey
Secretary

Barbara Davidson
Assistant Secretary

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 20, 2007

TIME: 8:30 a.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly

MEMBERS ABSENT/ EXCUSED: NONE

CONVENED: **Chairman Lodge** called the meeting to order at 8:35 a.m. **Chairman Lodge** thanked Arlene Mahaffey, Barbara Davidson, Sandy Boyington, Jeanne Clayton, and Ann DeAngeli for being such big helps with the Health & Welfare minutes.

MINUTES: **Vice Chairman Broadsword** made a motion to approve the minutes of February 12, 2007, as corrected. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

Senator Werk made a motion to approve the minutes of February 13, 2007, as corrected. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

Senator Darrington made a motion to approve the minutes of February 14, 2007, as corrected. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Broadsword made a motion to approve the minutes of February 20, 2007, as written. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

Senator Hammond made a motion to approve the minutes of February 28, 2007, as written. **Vice Chairman Broadsword** seconded the motion. The motion carried by **voice vote**.

Senator Coiner made a motion to approve the minutes of March 12, 2007, as written. **Senator Werk** seconded the motion. The motion carried by **voice vote**.

Vice Chairman Broadsword made a motion to approve the minutes of March 14, 2007, as written. **Senator Hammond** seconded the motion. The motion carried by **voice vote**.

SCR 121 Rejecting certain rules relating to Panhandle Health District - **Senator Goedde** explained this resolution is not about arguing the science of the bedroom vs. square footage method. The resolution is to have conversations and dialog and come to some mutual determination.

Senator Broadsword wanted to make sure that being considered were the number of bathrooms and utility rooms in a structure. That is actually where the water comes from, not a bedroom or the habitable square footage. **Senator Goedde** said he would point this out to the parties involved.

Steven West, President CENTRA Consulting, Inc. also representing Blackrock Development spoke in support of SCR 121. He said the experts at the Panhandle Health District agree, it is time to step back and take a look at this. **Mr. West** explained this rule contains a number of flaws that result in significant adverse impacts to the property owners and building contractors in five northern counties. Those are unintended consequences, but very real. There is insufficient data to suggest that flow based on square footage of habitable space is a reliable method to determine flow. Considerable data exists that suggests new dwelling units are generating far less flow than currently projected. There are other much less restrictive or onerous technologies to deal with projected flows from dwelling units. The Panhandle Health District suggests the pending rule is needed to address septic system failures. **Mr. West** pointed out the pending rule as proposed creates a severe and onerous hardship on property owners in the five northern counties in terms of increased cost for septic systems and the lawful use of their land.

Senator Kelly asked why these issues weren't raised during the public comment period. **Mr. West** said he was not involved when this issue was being proposed, had he been aware of what was going on, he would of commented.

Senator McGee asked who is opposed to this resolution. **Mr. West** has not been contacted by anyone opposed to this. While the health district had some reservations coming in, their letter states their official position as supportive of the resolution.

Senator Coiner asked how this rule would affect regular homes vs. trophy homes. **Mr. West** explained this is where the peak flow comes into play. There are adequate ways to access potential flows coming from a home in order to assure a septic system is sized appropriately.

Senator Hammond felt this was getting into the rules and away from the issue. If we move forward with this there will be time next year to get into those rules.

Senator Werk asked **Mr. West** if he was a lakefront property owner. **Mr. West** said his family owns a lakefront property, they have owned it since 1970.

John Eaton for Idaho Association of Realtors spoke in support of SCR 121. **Mr. Eaton** said this issue has been dealt with in the past. DEQ proposed this rule in 2003, it was opposed by Idaho Association of Realtors, the Health and Welfare Committee, and the legislature and has not been back since. He said the rule was opposed because there was no scientific basis for an increase in size. Most of the associations that

would be concerned with this issue are down here. **Mr. Eaton** feels it may have been a strategic decision that all the hearings heard on this were as far away from Boise as possible.

David Yorgason, Capital Development, said he was born and raised in this valley. He just built a subdivision in Eagle with septic drain fields. When a subdivision is developed the lots are established based on rules at that time. If rules change with no grandfather in place, that would propose a great impact on previously approved development. **Mr. Yorgason** said he appreciates the opportunity of sitting down and working together with all groups involved, they don't always agree, but appreciate the end result.

In closing **Senator Goedde** mentioned an email from Toni Hardesty, the DEQ is not going to bring back a square footage rule until they have some agreement with the builders and counties.

MOTION:

Senator Hammond made a motion to send SCR 121 to the floor with a do pass recommendation. **Senator Bair** seconded the motion.

Senator Hammond explained the issue before the committee is not to decide whether the rule, as proposed, is correct or not. The issue is, do we give the people in Northern Idaho the opportunity to examine that rule, to work with the Panhandle Health District and to see if it really is the best fit for North Idaho, from an environmental point of view? Voting against this is saying there is no opportunity for face to face meetings, where the parties are equal to each other. The choices are go ahead and put the ordinance into effect and fight for a couple of years, or pull back, sit down and figure out how to do things so it works for everybody.

Senator Kelly said she knows exactly how this process goes. She didn't hear any compromise in the testimonies today. She heard there is no science or basis for the proposed standard and the status quo is okay. She has no confidence that the process talked about today will result in anything different, in terms of the standard today. That is not okay.

Senator Darrington said there is something disingenuous with this issue. He is not sure where. He won't believe someone didn't exactly know what this rule was. He said no health district has any obligation to have hearing outside their district. Their rules are only for their district, not statewide. He is perplexed why this is happening at the 11th hour.

Senator Broadsword said as a resident of the five northern counties, she thinks it is unfair to make a rule more stringent there than any place in the state. She will be supporting this resolution.

Senator Coiner noted anytime something is done in the 11th hour, someone was not paying attention. The 11th hour fix is always a bad fix. He feels changing this now is sending a message that the hard work put into these rules was not appreciated, and you don't have to make an effort if things can be changed so easily. He feels there is negotiations to be done. He will be voting against this motion.

**ROLL CALL
VOTE:**

Those voting aye to send SCR 121 to the floor with a do pass recommendation were **Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Bair, and Hammond**. Those voting no were **Senators Coiner, Werk, and Kelly**. The motion carried.

Senator Kelly said she has prepared and will be submitting a minority report as part of the committee report.

ADJOURNMENT: There being no further business, **Chairman Lodge** adjourned the meeting at 9:35 a.m.

Senator Patti Anne Lodge
Chairman

Arlene Mahaffey
Secretary

Barbara Davidson
Assistant Secretary

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