

Senate Health & Welfare Committee

Minutes
2008



MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 9, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

WELCOME Chairman Lodge called the meeting to order, thanked everyone for coming, offered introductions of staff, and turned the meeting over to Vice Chairman Senator Broadsword to begin presentation of rules for the Department of Health and Welfare.

RULES

16-0202-0701 Relating to the rules of the Idaho Emergency Medical Services (EMS) Physician Commission (pending).

Dr. David Kim, Chair of the EMS Physician Commission (EMSPC), Emergency Physician at St. Alphonsus, and Medical Director of St. Alphonsus Life Flight, explained that the EMS Physician Commission's charge is to define the scope of practice and establish the standards for medical supervision for Idaho's EMT's and Paramedics. The Commission held 8 town home meetings across the State and allowed for public comment at monthly commission meetings regarding the rules in 2007. Dr. Kim outlined the sections of the rules and stated that they contained no mandates requiring new training or infrastructure that an EMS agency might find onerous. He thanked the physician and citizen members of the Commission for their diligence in creating the rules. **Senator Darrington** asked if the rules were designed to remedy the problem of the blur of responsibilities between professionals in performing their duties by delineating the responsibilities of physicians and emergency respondent. **Dr. Kim** said the rules are designed to encourage robust medical supervision for EMS agencies. **Vice Chairman Broadsword** asked if there had been any major complaints during the town home meeting. **Dr. Kim** responded that most were questions that required explanation and that none led to any major changes to the temporary rules. **Senator Werk** asked if anyone would be speaking in opposition to the rules? **Vice Chairman Broadsword** determined that no one present had opposing comments.

MOTION **Senator Werk** moved to approve 16-0202-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

16-0208-0701

Relating to Vital Statistics (Pending).

James Aydelotte, Bureau Chief of the Bureau of Vital Records and Health Statistics in the Department of Health & Welfare, explained that the intent of the pending rule change is to add advanced practice professional nurses and physician assistants to the list of those legally authorized to sign death and stillbirth certificates and authorize the final disposition and removal of a dead body or stillborn fetus. This allows their rules to agree with the amended statute. Other changes are for clarification and housekeeping changes. **Mr. Aydelotte** asked for approval of this rule. **Senator Werk** asked if this had anything to do with infant cause of death. **Mr. Aydelotte** replied that it only allowed advanced practice professional nurses to certify the cause of death.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

MOTION

Senator Darrington moved to approve 16-0208-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0210-0702

Relating to Idaho Reportable Diseases (Rewrite) (Pending).

Kathryn Turner, Surveillance Program Manager with the Office of Welfare, stated that this rewrite changes the Idaho Reportable Disease Rules to improve consistency and comprehensiveness of disease reporting and control; increase efficiency in updates to the chapter; and address emerging communicable disease threats to ultimately safeguard public health. **Senator Kelly** asked if these rules changes were based on National guidelines? **Ms. Turner** replied that yes, they are based on both National and Idaho specific guidelines.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

MOTION

Senator Hammond moved to approve 16-0210-0702. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0210-0701

Relating to Idaho Reportable Diseases (Repeal) (Pending).

Kathryn Turner, Surveillance Program Manager with the Office of Welfare, stated that this would repeal the old rules that Rule 16-0210-0702 replaced. She asked for the committee's adoption of this repeal as final.

MOTION

Senator Hammond moved to approve 16-0210-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and

can be accessed in the office of the Committee Secretary [see Attachment 3].

16-0215-0701

Relating to Immunization Requirements for Idaho School Children (Pending).

Dieuwke Spencer, Bureau Chief of Clinical & Preventative Services, stated that this rule adds language to 150.01 to clearly state that section 110 of these rules provide for exemption from immunizations, and clarifies language of the rule by adding an immunization table. This has been reviewed by both the Department Of Education and School Nurse Organization of Idaho and their comments have been incorporated. No public comment in opposition to the proposed changes was received. **Vice Chairman Broadsword** asked if section 110 was included in the rule being presented? **Ms. Spencer** responded that Section 110 is not being changed and is in current code now. **Senator Darrington** asked if Section 110 mirrors the Section of the code written by Dr. Riggs when he was in the Senate and that Section was written? **Ms. Spencer** stated yes, that is correct, it has not been changed. **Senator Bair** asked what condition precludes a child being exempt (as referred to in Section 150)? **Ms. Spencer** stated a parent may file for exemption on personal preference. **Senator Darrington** said the exemption was needed to get the legislation through the Legislature. **Chairman Lodge** asked for an update on the relationship of immunizations and autism. **Ms. Spencer** stated that there is no causative link between immunizations and autism. **Senator Hammond** asked how many parents have opted out of immunizations? **Ms. Spencer** said about 3%.

MOTION

Senator Hammond moved to approve 16-0215-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

16-0219-0701

Relating to Idaho Food Code (Pending).

Patrick Guzzle, Food Protection Program Manager for Epidemiology and Food Protection Division of Public Health, stated that these proposed additions improve consistency for vendors at farmers markets and safeguard public health by making NoroVirus an excludable condition for employment of food establishments. The proposed definition of an "intermittent food establishment:" will increase consistency for vendors at farmers markets. The Idaho Food Safety Advisory Committee met in April 2006 and invited vendors and managers of farmers markets from around the State. This committee includes public health professionals and representatives from the Idaho Retailer's Assn., the Idaho Restaurant and Lodging Assn., several food establishment operations including Albertsons and WinCo, and other stakeholders. Negotiated rule making meetings were conducted as well. This proposed definition is a unanimous consensus of these meetings. Norovirus (commonly called the Cruise Ship Virus) is one of the leading causes of food-borne outbreaks in the U.S. This rule will require persons who are experiencing symptoms of

Norovirus to report this to supervisors. The supervisor must then report instances of this virus to the District Health Department for guidance. This is consistent with requirements for other illness already outlined within the Idaho Food Code. **Senator Hammond** asked what the practical application of this rule would be? **Mr. Guzzle** explained that a vendor will be allowed to sell their food item at a specific farmers market for the duration of the season. Vendors are required to obtain permits for certain food items from their Health District. This eliminates current inconsistencies between Health Districts. **Chairman Lodge** asked how mobile food trucks and food being sold out of trunks of cars is regulated? **Mr. Guzzle** stated that mobile food trucks are regulated through the local Health Districts. He was not aware of people selling food out of the trunks of cars. If the Health District was aware of this they would work with the vendor to obtain the necessary permits. There are some foods that are exempted from regulation - whole produce, etc. **Chairman Lodge** asked about vendors selling seafood from trucks with out of state license plates, should they have a permit? **Mr. Guzzle** stated that those vendors are supposed to contact the District Health Department when they come into the State to obtain a permit and should have one displayed. **Senator Kelly** asked whether tattoo parlors are regulated. **Dr. Christine Hahn** answered that there have not been any documented infectious diseases from tattoo parlors. **Senator Darrington** stated that Idaho tattoo legislation says that citizens under the age of 14 are prohibited from receiving tattoos, ages 14-18 tattoos are permitted with parental/guardianship consent. The difficulty with issue of licenses was that the IMA couldn't take a position because there were no incidences they could trace back to bad practices. **Senator Kelly** stated that she is aware of the history, but wanted to mention this so that the committee would know that these facilities are basically unregulated in Idaho and anyone can set up shop.

MOTION

Senator Coiner moved to approve 16-0219-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

16-0227-0701

Relating to Idaho Radiation Control Rules (Pending).

David Eisentrager, Manager of the Laboratory Improvement Section of the Bureau of Laboratories, X-ray Certification Program, explained that the regulatory authority for the inspections currently being performed had previously been located in the Department of Environmental Quality area of the Idaho Administrative Procedures Act (IDAPA) code. These numbering and language changes will place these regulations in the Health and Welfare section of the code. There are also changes to the numbering system, language clarifications and changes to the paragraphs to bring this regulation into compliance with the Office of Administrative Rules' standards.

Supporting documents related to this testimony have been archived and

can be accessed in the office of the Committee Secretary [see Attachment 6].

MOTION

Senator Werk moved to approve 16-0227-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0301-0701

Relating to eligibility for health care assistance for families & children (Pending).

Linda Palmer, Program Specialist for the Department of Health and Welfare, Division of Welfare, explained that this rule contains two separate sections, both of which are being added to bring Idaho into compliance with changes made in Federal Regulations for Medicaid eligibility. No public hearings were held on this issue. The first contains updates to Section 1902 of the Social Security Act which requires Medicaid be given to any new born baby for one year from the date of birth when the delivery of the baby was paid for by Medicaid. This change ensures that all babies born in the United States are deemed eligible when delivery cost is covered by Medicaid. The second change further defines two groups of individuals considered exempt from the Medicaid requirement to provide proof of their United States citizenship and identity. These groups are individuals receiving Social Security Disability income, and children receiving child welfare services under Title IV-B of the Social Security Act. These individuals are considered exempt because the Department of Health & Welfare and the Social Security Administration have verified citizenship and identity before issuing the benefits. This change decreases the burden on the client and employees, saving time by using documentation already gathered by other government agencies. **Vice Chairman Broadword** asked how much does this extend care for babies? **Ms. Palmer** answered that this doesn't extend care for babies, it extends the coverage to mothers who received their payment for the birth of their baby for a time-limited, like emergency medical, but the baby is a U.S. citizen and all babies that are United States citizens get the care for one full year from the date of their birth. **Vice Chairman Broadword** confirmed that this just brings Idaho into compliance with Federal regulations.

MOTION

Senator Bair moved to approve 16-0301-0701. **Senator Werk** seconded the motion. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

16-0301-0702

Relating to Eligibility for health care assistance for families and children (Pending).

Linda Palmer, Program Specialist for the Department of Health & Welfare, Division of Welfare, explained that this rule contains three separate items. The first is United States citizenship documentation requirements which were updated because of Federal rules that became final on July 13, 2007. The changes include adding clarification of the type of acceptable documents that can be used to provide proof of United States citizenship and identity. The second change brings Idaho into

compliance by allowing individuals to request their benefits be continued pending a fair hearing decision, if they make the request before the effective date of the action. Under the current rule, the individual has only 10 days from the date the notice of decision was mailed. The third change is to restore a section of rule that was removed in error during Medicaid reform. The restored section of the rule governs the reporting requirements for participants receiving Transitional Medicaid that are required by Federal regulation. Adding these changes to the Health Care for Families and Children Program rules ensure that Idaho is in compliance with current Federal regulations. **Vice Chairman Broadsword** confirmed that these were items that were inadvertently left out in the rewrite of Medicaid. **Ms. Palmer** stated that yes, that was correct.

MOTION

Senator McGee moved to accept 16-0301-0702. The motion was seconded by **Senator Hammond**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8].

16-0301-0703

Relating to eligibility for health care assistance for families & children (Pending).

Linda Palmer, Program Specialist for the Department of Health & Welfare, Division of Welfare, stated that this rule change brings the Health Care for Families and Children reporting requirements into alignment with proposed changes to the Food Stamp and Aid to the Aged, Blind and Disabled (AABD) programs. Currently Family Medicaid participants must report a change within 10 days from the date the change happens. This rule change allows a participant until the 10th day of the month after the change occurs to notify the Department. Aligning the rules for these programs reduces confusion for participants and encourages them to report the required changes to the Department. Prompt reporting for all programs can improve accuracy and timeliness of benefit determination. **Senator Werk** asked for clarification of the time line. If a participant has a change on the 9th, would the participant have only one day to report? **Ms. Palmer** stated that the participant would have until the 10th of the following month to report.

MOTION

Senator Werk moved to approve 16-0301-0703. The motion was seconded by **Senator Darrington**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 9].

16-0304-0701

Relating to the food stamp program in Idaho (Pending).

Rosie Andueza stated that this rule is about making Idaho's Food Stamp Program more customer friendly and less error prone. The Food Stamp Program has recently received an award for being the second most improved state in the nation in Federal fiscal year 2006. Modifying complex Food Stamp Program rules so that they are less error prone and

more customer friendly was one strategy that led to this accomplishment. She thanked the Committee for their support in making these rule changes. This rule change includes three simple changes to the Food Stamp regulations: The first change allows customers additional time to report changes in their income; the second requires that an applicant re-file an application in certain situations; and the third changes how and when to pro-rate food stamp benefits when an applicant has caused the delay. All three of these changes will simplify the Food Stamp program, making it easier for staff to understand the complex regulations and to explain those regulations to clients. **Senator McGee** stated that the agency is beginning to get out of the woods regarding penalties of the past, and noted that these changes seem to be moving the agency further away from that situation. **Ms. Andueza** replied yes, that it is. **Chairman Lodge** congratulated **Ms. Andueza** and the group for the work they have accomplished. **Ms. Andueza** thanked **Chairman Lodge** and stated that it was everyone in the field as well, everyone worked very hard.

MOTION

Chairman Lodge moved to approve 16-0304-0701. **Senator Darrington** seconded the motion. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 10].

16-0306-0702

Relating to refugee medical assistance (Rewrite) (Pending).

Damaris Borden explained that the Refugee Medical Assistance Program is a Federally funded program designed to help refugees transition into employment and self-sufficiency. It is limited to 8 months and is not funded by Medicaid, but is funded by the Office of Refugee Resettlement. The rules were reorganized for clarity because they have not been updated in almost 10 years. The second part of the rewrite proposed an income increase to 150% of Federal Poverty Limits. This increase would potentially add up to 7 people to Refugee Medical Assistance per year. The current income limit for Refugee Medical Assistance amounts to approximately 19% of the Federal Poverty Limits, or about \$300/month for a family of 4; with the proposed change that family could earn \$2,581/month. The Idaho Office for Refugees supports this change. This change allows incoming families to be eligible for health coverage. Identifying and addressing health concerns allows refugee families to move more quickly into employment and self-sufficiency. **Vice Chairman Broadsword** asked for clarification that this program does not involve Medicaid funding, and that the previous income limit was from 1993. **Ms. Borden** replied that it does not come from Medicaid funding, but from the Office of Refugee Resettlement, and the previous income requirement was from the old welfare standards.

MOTION

Senator Hammond moved to approve 16-0306-0702. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 11].

16-0306-0701 Relating to refugee medical assistance (Repeal) (Pending).

Damaris Borden explained that this rule is to repeal the rules that were replaced by 16-0306-0702.

MOTION **Senator Hammond** moved adoption of 16-0306-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

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

Senator Patti Ann Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 (Annex 5th Floor).

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 10, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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 3:00 p.m. and introduced guest speaker, **Richard Armstrong**, Director of the Department of Health and Welfare.

GUESTS: See an attached sign-in sheet.

GUEST SPEAKER: **Richard Armstrong**, Director of the Department of Health and Welfare, thanked the Committee for its work on behalf of the Department, and gave a brief "State of the Department" report. One yardstick he uses to measure effectiveness of the Department is attitude of employees because if morale and satisfaction is there, there will be good performance. A recent followup of management showed a significant improvement across the board in many important measures. Among staff there is a 33% increase in their belief that morale is very good and a 35% increase among managers. Overall satisfaction with their jobs was at 71% and feeling valued was at 75% - all significant improvements from the study in 2005/2006. The real measure of success is how the Department is performing for the customer, the citizens of Idaho. These are measured in application processing, food stamp processing, and error rates. The food stamp error rate is under 3.9% at this time, down from over 9% three years ago against the National benchmark of 6%. In the last two years the time for food stamp application processing has gone from 21 days down to 14 days on normal process; expedited applications have gone from 5 days to 2 days. Medicaid application processing has gone from 47 days to 26 days, and re-certifications are now 99.6% certified in the month they're due. One of his commitments is to continue to improve the business processes. The performance seen here is truly a result of monies the Legislature had given the Department to overhaul the eligibility system for Welfare. It has been an outstanding process. The plan forward is to move into real-time eligibility at remote sites and they are working on that technology now. The new Medicaid processing system is underway and progressing, and parts of it may even be up and running early. Tools are needed to help move into the current age in mental health and substance abuse treatment and tracking. Because studies have shown that this area is currently understaffed, they are asking for 12 workers for the Boise

area, which now has the poorest performance and greatest demand. The emphasis is now on improving productivity of current employees and processes, not hiring more employees unless necessary.

One of the most pressing concerns now is to construct and operate a secure mental health facility. There is a good plan, and a site for this facility, one that doesn't look institutional. Mental health will have 40 beds in this facility - now we have 20 people in care who are deemed dangerous, so this will give room for growth. Part of this project is a shorter term process to start changing the mission at the State hospital campus in Nampa. Many people with disabilities are being out-placed in the community if and when they can be. Those remaining are profoundly disabled or very fragile medically and simply cannot be managed any other way. So this year one of the buildings at this facility will be modified to create a 20-bed secure facility, although not as secure as the larger 300-bed facility will be, but a more secure environment than we now have in either hospital North or hospital South.

Lastly, in 2006 the Legislature commissioned the Health Quality Planning Commission. Director Armstrong was given the responsibility of organizing the group and commencing meetings by summer of 2006. The group has done a great job, and the plan is to roll out a secure health data exchange to move clinical information electronically between hospitals and labs to physicians to give the physician more information about the patient. This will improve patient treatment. The Commission is committed to making sure the system is and stays secure. This will improve compliance and remove redundancy, thus saving money. Private sector will fund \$1.5 million of the \$2 million pilot costs.

Chairman Lodge asked what is the total cost? **Director Armstrong** reported that it is estimated to be in the range of \$3 - \$4 million/year range for operation of the system. These costs will be paid by the users of the system, not by the State. **Vice Chairman Broadsword** asked for clarification - there is a system going online next month for pharmacists so that physicians can understand who is prescribing for a patient. Is this the system being launched by the Department of Health and Welfare?

Director Armstrong replied that it is not the same system. **Vice Chairman Broadsword** requested that Director Armstrong contact the Executive Director of the Board of Pharmacy to see if there is some way to link the two systems so that we aren't duplicating something that is already in place and so we're spending our State dollars wisely. **Director Armstrong** said that he will do that. **Senator Coiner** asked that with unemployment now at about 3%, what does the Director foresee in the change of the Departments workload with a change in the economy?

Director Armstrong replied that it is extremely important to look ahead to a softening of the economy because that would have a big impact on the budget and would require aggressive cost containing efforts to stabilize the budget. **Senator Coiner** asked if the Department was documenting people who are going through successful training programs and gaining employment, and are thus exiting public assistance? **Director Armstrong** isn't aware of any specific tracking of these numbers, but will look into this. They do track work activities, so it may be that this is being tracked already. **Senator Werk** asked if Director Armstrong would work with the Department of Corrections to track the families of those in incarceration to get a better understanding of what incarceration really costs the State

aside from the easily trackable prison costs? **Director Armstrong** stated he will do that. **Chairman Lodge** thanked Director Armstrong and his Commission and staff.

RULES

16-0307-0701 Relating to rules for home health agencies (Pending/Fee).

Randy May, Deputy Administrator from Medicaid Division of the Department of Health and Welfare, stated that the purpose of this new section of rule is to help protect the health and safety of Idaho residents receiving services from Home Health Agencies. These agencies provide skilled nursing care, home health aide services, homemaker services, physical therapy, nutritional services, and social services designed to help individuals live more independently in their own homes rather than in an institutional setting. These services are typically delivered in the individual's home in a one-on-one setting. This rule helps protect citizens receiving these services by requiring Home Health Agencies to conduct criminal history and background checks using the Department's Criminal History Check Program on all staff hired after October 1, 2007. This new requirement is a requisite for the Agency to hold a license to operate within the State of Idaho. This rule was crafted through formal negotiated rule making with Industry representatives. Two public notices were published and a public hearing was held, and no comments were received on these rules. **Senator Kelly** asked if employees are working during the background check? **Mr. May** answered yes, after an initial clearance, which takes two days, they may work under supervision. **Vice Chairman Broadsword** stated that she has heard things about other agencies and worries about people coming in to take care of people in their homes and whether those folks have had a background check and whether those people were reputable. She asked if this rule would take care of that? **Mr. May** replied that it will.

MOTION **Senator McGee** moved that the committee adopt 16-0307-0701. The motion was seconded by **Chairman Lodge**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

16-0315-0701 Relating to rules & minimum standards governing semi-independent group residential facilities for the developmentally disabled or mentally ill (Pending/Fee).

Randy May stated that the purpose of this new section of rule is to help protect the health and safety of Idaho residents receiving services in semi-independent group residential facilities for the developmentally disabled or the mentally ill. Semi-independent group homes provide services to persons who are largely able to care for themselves and who possess sufficient community living skills to function in a home-like, non-institutional setting. These homes are intended to provide a transition between discharge from institutional care and full return to independent community living. There are seven of these homes throughout Idaho. This

rule impacts semi-independent homes by adding a new requirement that they conduct criminal history and background checks using the Department's program on all staff hired after October 1, 2007. This new requirement is a requisite for the home to hold an agreement to operate within the State of Idaho. This rule was crafted through formal negotiated rulemaking with Industry representatives. Two public notices were published and a public hearing was held, and no comments were received on these rules. **Senator Hammond** asked with whom the background checks were done? **Mr. May** responded that they are done through the FBI's National Crime Information Center. **Senator Hammond** asked if the FBI has every conviction at any level? **Mr. May** responded that no, there are about 3000 counties in the nation and only about 75% are on it.

MOTION

Senator Hammond moved to adopt 16-0315-0701. The motion was seconded by **Senator McGee**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

16-0302-0701

Relating to Minimum Standards for Skilled Nursing & Intermediate Care Facilities (Pending/Fee).

Randy May explained that this rule would add a new section to the rules governing skilled nursing facilities and intermediate care facilities in Idaho. The purpose of this addition is to help protect the health and safety of Idaho residents living in nursing facilities. This rule impacts skilled nursing facilities and intermediate care facilities by adding a new requirement that they conduct criminal history and background checks on all staff hired after October 1, 2007. This new requirement is a requisite for the home to hold a license to operate within the State of Idaho. The text of the rule allows two options for conducting the criminal background check. First, they can use the department's criminal background check; or they can use a criminal background check from another source providing that background check includes a fingerprint identification and a check against databases run by the Federal Bureau of Investigation's National Crime Information Center, the Idaho State Police, the Idaho Sexual Offender Registry, the Office of Inspector General Exclusion List, and the Idaho Nurse Aide Registry. This rule was crafted through formal negotiated rulemaking with Industry representatives. Two public notices were published, and no comments were received on these rules. In September a public hearing was held where comment was received from one individual. **Senator Bair** asked who pays for the background checks? **Mr. May** answered that the rule states that the individual pays. It is a \$48 fee and is good for three years and is transferable. **Senator Werk** asked if there is anything magical about the three year time period? Is there any reason why it is three years and not two or one? **Mr. May** deferred to Mond Warren, Bureau Chief with the Bureau of Audits and Investigations. He stated that the Department formerly had a one year requirement and saw a lot of people coming back through with the same results. In working with the industry providers and looking at what other states were doing, it was extended to three years and is transferable to another employer for three years. However, a new employer has the option to require another

background check. **Kris Ellis**, speaking on behalf of the Idaho Healthcare Association, stated that the Idaho Healthcare Association certainly is not opposed to criminal background checks - they were part of the instigators behind the pilot project that got the whole thing off the ground. The opposition is simply this rule as it applies to the nursing facilities only and the additional cost and duplication of criminal history checks that it requires. The three largest nursing home companies in Idaho use a Federally approved program that is referred to as Kroll, a private company that does criminal history checks. There are counties in Idaho that still do not report very effectively to the FBI. One facility here in Idaho put 14 applicants through both systems and found that only two were rejected by the FBI system but 12 were rejected by the Kroll system. The reason why at least one of these companies uses the Kroll system is because it was a negotiated point with the Centers for Medicare/Medicaid Services (CMS) and is required as part of a bankruptcy reorganization. So they are forced to do two background checks on each employee. As Randy May said, we did take this to the Department and at that point they weren't willing to change. The Idaho Healthcare Association is asking for rejection of this rule and asking the Department to work with the providers in this narrow instance to allow for an additional option for these nursing homes who use Kroll for their criminal history checks. **Senator Darrington** asked why negotiations were unprofitable? **Mr. May** replied that the Department did considerable research during negotiations and found that there are no National standards on what constitutes a criminal background check. Some providers do a thorough job and some don't. The Department believes that fingerprints are critical because until you have fingerprints you're not really sure who is sitting in front of you. Statistics show that one out of every eight adults within the next two years will be a victim of identity theft. The second part the Department believes is critical is that you need to bounce it against a National Criminal Database. Because Idaho is the fourth fastest growing state in the country, with many additional people coming into the State we need to have a National Criminal background check. None of the checks that these other institutes do include an FBI fingerprint or background check. There are two pieces of legislation in Congress now, one of which will mandate fingerprint, FBI based background checks. We were hoping this legislation would be accomplished before this Senate Session, but that didn't happen. The Department believes this is the right way to go. In the Board of Health and Welfare in July they passed a special resolution stating that a fingerprint background check in the NCIC database is critical for any background check. **Senator Darrington** addressed his question to Kris Ellis-it sounds like she believes the Kroll system is tougher than the FBI system; is it, or why won't the nursing homes give up Kroll and go with the FBI check instead of having to do both? **Ms. Ellis** replied that part of the issue is that lots of people don't have a fingerprint in the database, therefore, they believe Kroll does a much better job. If an individual is in the database, then the FBI check may be better. **Vice Chairman Broadsword** said that if an individual commits a felony they will be in the database, so she doesn't believe that argument holds. Because of that she believes Mr. May's point about not knowing who is in front of you without a fingerprint is true. **Ms. Ellis** stated that she doesn't think many people would use someone else's identity to get a \$10/hour job. Also, at least one

organization in Idaho is mandated by CMS to use Kroll as part of their bankruptcy reorganization. **Vice Chairman Broadsword** asked Mr. May if the Department of Health and Welfare would work with CMS to address that specific agency's concern and help this nursing home through that process so that they would not have to duplicate? **Mr. May** responded that he thought they would. **Vice Chairman Broadsword** stated that Mr. Mond Warren was shaking his head that yes, the Fraud Unit would take that on? **Mr. Warren** stated that yes, they would. **Mr. May** also stated that as Ms. Ellis stated, it is only a \$10/hour job, but that's based on the assumption that these people are motivated by money. In many cases they are motivated by something entirely different than money. **Robert Vande Merwe**, with the Idaho Health Care Association stated that it is two of the three largest companies that have a corporate compliance agreement with CMS, and their compliance agreement mandates that they use a nationwide system and Kroll was approved by CMS. If we have a State rule that says they must have the FBI background check, unless there is an exception to that State rule for those two corporations, that's the only way to allow them to not have to do both checks. Those two companies would love it if Congress would pass a law that said everyone has to do it that way, then they wouldn't have to do both checks like they're doing now. **Vice Chairman Broadsword** said that in her opinion if the State writes a letter to CMS and says that the State requires a specific background check, CMS would lift their requirement. **Senator Darrington** asked does CMS not accept the Federal Bureau of Investigation's Nation Crime Background Checks? **Mr. Vande Merwe** stated that CMS did accept the FBI background checks during the pilot project, but now the pilot project is over and the agencies are now required to pay for two background checks. If the State can convince CMS to make Idaho an exception resulting in the agency only paying for one background check that would solve the problem. **Senator Darrington** asked if this problem is because of the bankruptcy only, separate from the health quality care regulation? **Mr. Vande Merwe** answered yes, but after coming out of bankruptcy if companies want to have a medicare/medicaid contract again they are forced into a Corporate Compliance Agreement which really is tied together with CMS's quality - they want to know what they will do above and beyond the regulations toward quality before they allow them to come back into business. **Senator Bair** asked if it would be better to have these two groups to work together toward a solution and come back to the Committee? **Vice Chairman Broadsword** stated not with a rule.

MOTION

Senator Werk moved to approve 16-0302-0701. The motion was seconded by **Senator Hammond**. **Vice Chairman Broadsword** restated that there was a commitment from the Department of Fraud Security and the Department of Health and Welfare to work with the representative from those corporations that do not currently use the FBI Background Check, to try to get a resolution to their issue. **Chairman Lodge** stated that she would like to have a report back as soon as possible that this has been done. **Senator Hammond** stated that his second of the motion was based on that assumption. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and

can be accessed in the office of the Committee Secretary [see Attachment 3].

16-0311-0701

Relating to Intermediate Care Facilities for the Mentally Retarded (ICF/MR) (Pending/Fee).

Randy May, stated that the purpose of this new rule is to help protect the health and safety of Idaho residents living in Intermediate Care Facilities for the Mentally Retarded. This rule impacts skilled nursing facilities and intermediate care facilities by adding a new requirement that they conduct criminal history and background checks on all staff hired after October 1, 2007. This new requirement is a requisite for the facility to hold a license to operate within the State of Idaho. The text of the rule allows two options for conducting the criminal background check. First, they can use the department's criminal background check; or they can use a criminal background check from another source providing that background check includes a fingerprint identification and a check against databases run by the Federal Bureau of Investigation's National Crime Information Center, the Idaho State Police, the Idaho Sexual Offender Registry, the Office of Inspector General Exclusion List, and the Idaho Nurse Aide Registry. This rule was crafted through formal negotiated rulemaking with Industry representatives. Two public notices were published, and no comments were received on these rules. A public hearing was held where comment was received from one individual.

MOTION

Senator Coiner moved to approve 16-0311-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

16-0322-0701

Relating to Residential Care or Assisted Living Facilities (Pending/Fee).

Randy May, stated that the purpose of this new rule is to help protect the health and safety of Idaho residents living in Residential Care or Assisted Living Facilities. Residential Care or Assisted Living Facilities provide a safe, homelike living arrangement for adults who need some assistance with activities of daily living, but do not require the ongoing nursing care provided in skilled nursing homes. Assisted Living Facilities promote community integration and help delay admission to more expensive institutional placements. This rule impacts those facilities by adding a new requirement that they conduct criminal history and background checks on all staff hired after October 1, 2007. This new requirement is a requisite for the facility to hold a license to operate within the State of Idaho. The text of the rule allows two options for conducting the criminal background check. First, they can use the department's criminal background check; or they can use a criminal background check from another source providing that background check includes a fingerprint identification and a check against databases run by the Federal Bureau of Investigation's National Crime Information Center, the Idaho State Police, the Idaho Sexual Offender Registry, the Office of Inspector General Exclusion List, and the Idaho Nurse Aide Registry. This rule was crafted through formal negotiated rulemaking with Industry representatives. Two public notices

were published, and no comments were received on these rules. A public hearing was held where comment was received from one individual.

MOTION

Senator Werk moved to approve 16-0322-0701. The motion was seconded by **Senator McGee**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

16-0308-0701

Relating to temporary assistance for families in Idaho (TAFI) (Pending).

Rosie Andueza, Program Manager for the Department of Health and Welfare, explained that TAFI is a cash assistance program for low-income families. This rule is intended to align self-employment income calculations for the TAFI program with the same methodology the Food Stamp Program uses to calculate self-employment income. Since this rule was originally published, the Department has found it necessary to make changes to the existing methods the Food Stamp Program uses to calculate Self Employment income. The Food Stamp Program implemented this methodology last year, but have since discovered that some of Idaho's self-employed families are being negatively impacted by the current rule. Because the Food Stamp Program will change its rule on the calculation of Self Employment income, the Department asks that this rule be rejected. The current Food Stamp rule allows for a flat 50% standard deduction for self-employment households. Because the flat deduction of 50% is not a realistic calculation for some self-employment enterprises, particularly those that are newly starting, the Department will change the rule for the Food Stamp Program. In order to maintain consistency across program lines, the TAFI Program will also implement the same rule change this spring. The Department will propose a temporary rule in the Food Stamp and TAFI Programs that will allow for the 50% flat deduction, or, when applicable, allow the family to provide verifications of their actual income and expenses when those expenses exceed 50%. The allowance of actual income and expenses has always been the policy for farming self-employment enterprises. Making this change will allow for the same application for all Food Stamp and TAFI applicants and not differentiate between farming and non-farming self-employment income. **Senator Darrington** asked has the Department prepared a Resolution of Rejection, or is it proposing that the Resolution start in the Senate or House Committee? It takes a Resolution to reject this pending rule. **Ms. Andueza** responded that she was unaware that she had to prepare a Resolution of Rejection. The Department's Internal Rules Unit told her if she presented in the Senate and the House Committees the rule could be rejected. She presented in the House Committee just prior to the Senate Committee. **Vice Chairwoman Broadsword** stated that the rule can be rejected, but it will take a resolution and since Ms. Andueza presented in the House first, the House should work with her to craft the resolution. **Senator Kelly** asked if the rule has to be rejected right now or can it wait until the end of session? **Ms. Andueza** stated that it can wait. **Senator Darrington** stated that it can't be in the omnibus because it needs a resolution and the Committee today should just take no action or say we move for rejection,

but it is mute because the only thing that will matter is the move on the resolution. **Vice Chairman Broadsword** asked if Ms. Andueza had presented to the full House Committee or to the House Sub-Committee? **Ms. Andueza** stated it was the House Sub-Committee. **Vice Chairman Broadsword** asked Ms. Andueza to work with the Senate Health and Welfare Committee to generate a resolution.

MOTION

Senator Werk moved to reject 16-0308-0701. The motion was seconded by **Chairman Lodge**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

16-0305-0702

Relating to eligibility for aid to the aged, blind, & disabled (Pending).

Susie Cummins, Medicaid Program Specialist for the Division of Welfare, introduced Bob Aldridge, representing Trust and Estate Professionals of Idaho. This rule brings the Medicaid eligibility rules in alignment with Senate Bill 1170, passed during the 2007 Legislative Session, amending existing law relating to the Long-Term Care Partnership Program. Temporary rules in 16-0305-0701 have been rescinded due to the statutory changes. Previously an individual who purchased a qualified Long-Term Care Partnership Policy was required to exhaust the benefits of that policy before any resources could be protected for Medicaid eligibility. Under these rules an individual is not required to exhaust the policy before applying for Medicaid. They will be allowed to keep resources equal to the amount that the policy paid out at the time their long-term care Medicaid application is approved. This dollar amount is also exempt from estate recovery after they pass away. This rule encourages individuals to purchase qualified Long-Term Care policies, which will help ease the financial burden on Idaho's medical assistance program because part or all of their long-term care will be paid for by private insurance. **Vice Chairman Broadsword** said she assumed this was the result of a long and arduous negotiations with Bob and his group? Thank you both for your hard work on this. **Ms. Cummins** said that yes, it was. **Senator Hammond** said he thought they did this last year. **Ms. Cummins** said that last year temporary rules were proposed late in the session and at the same time Senate Bill 1170 went through legislation. Both affected the partnership policies but included the piece that the policies had to be exhausted before they could apply for medicaid. Because of Senate Bill 1170, those temporary rules were rescinded and they started over. **Mr. Aldridge**, Trust and Estate Professionals of Idaho, said there were extensive meetings which were extremely productive and the process worked very well. They are now trying to get a more structured on-going version of those meetings to keep communication in process. There were several areas in which they felt there might be additional need for items. They felt this on-going process will handle those, and therefore they have no objection to these rules and will continue to work on communications basis with the Department.

MOTION

Senator Darrington moved to approve 16-0305-0702. The motion was seconded by **Senator Bair**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

16-0305-0703

Relating to eligibility for aid to the aged, blind, & disabled (Pending).

Susie Cummins explained that during the 2007 Legislative presentations, constituents expressed concerns to the Senate Health and Welfare Committee about the wording in some of the proposed Medicaid eligibility rules. The rules were passed with the understanding that the Department would conduct formal rule negotiations in an effort to add clarity to them. These rules are the result of those formal rule negotiations. Definitions have been added for partnership policies, pension funds and treasury rate so that it is clear what the terms mean when used in the rules. One change gives guidance on calculating the value of a life estate. Under a life estate, an individual who owns property transfers ownership of that property to another individual while retaining, for the rest of their life, certain rights to that property. Generally, a life estate entitles the owner to possess, use and obtain profits from the property as long as they live. However, actual ownership of the property passes to another individual upon the person's death. As with a home, in certain circumstances, a life estate can be considered a countable resource for someone applying for Medicaid. A table has been added to the eligibility rules so that the countable value of the life estate can be determined. The next update affects the Community Spouse Resource Allowance. When one person of a couple needs assistance paying for nursing home care, the spouse at home is given a Community Spouse Resource Allowance so that they are not required to spend all of their assets for the nursing home care of their ill spouse. The amount of the allowance is dependent on the amount of the resources they have as a couple. This rule clarifies that the couple can request an increase in the community spouse resource allowance if those resources are needed to produce more income for the at-home spouse's living expenses. The last change updates the annuity rules to clearly define the difference between revocable and irrevocable annuities and when an asset transfer penalty should be applied as the result of purchasing an irrevocable annuity. Adding clarity to the rules will result in consistent application of the rules by the Department and a better understanding of them by the public. **Mr. Aldridge**, Trust and Estate Professionals of Idaho, said there were extensive meetings which were extremely productive and the process worked very well. They are now trying to get a more structured on-going version of those meetings to keep communication in process. There were several areas in which they felt there might be additional need for items. They felt this on-going process will handle those, and therefore they have no objection to these rules and will continue to work on communications basis with the Department.

MOTION

Senator Werk moved to approve 16-0305-0703. The motion was seconded by **Senator McGee**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8].

16-0305-0704

Relating to eligibility for aid to the aged, blind, & disabled (Pending).

Susie Cummins explained that the changes in this rule align the Medicaid eligibility rules with Federal guidance and regulations. Two changes align the wording in the Medicaid rules with Federal regulations. The first change rewords the term “waived newborn” to match the Federal terminology “deemed newborn”. The second change allows an individual to request continued benefits pending a fair hearing if they make the request before the effective date of the negative action taken on their benefits. Under the current rule, the individual only has 10 days from the date the notice of decision was mailed. The next rule change has to do with U.S. Citizenship documentation requirements that have been updated because of Federal rules that became final on July 13, 2007. Changes include adding acceptable documents for proof of U.S. Citizenship and added criteria for exempting certain individuals from providing proof because they have already provided it to another government agency. These changes are also proposed in the Family Medicaid rules. The income trust changes are a result of formal rule negotiations and Federal guidance. An income trust is also known as a “Miller Trust”. An individual who would otherwise be over the income limit for long-term care eligibility is allowed to place part or all of his income in trust as long as it is used to meet the cost of care in the nursing home. Under current Idaho rule, the income must be paid directly from the source to the trust before it is not countable toward the individual’s eligibility. This causes a delay in their eligibility and results in a hardship on the individual because they cannot qualify for Medicaid and do not have enough income to pay the private pay rate for their long-term care. The Federal guidance states that income paid by the individual to the trust in the same month it is received does not count for Medicaid eligibility. This rule change follows the guidance and allows an individual to become eligible if the income is placed in trust the same month it is received. The rule change will allow individuals whose income is over the income limit to become eligible at least one month earlier. In June 2006 through May 2007 there were 77 individuals approved for Long Term Care (LTC) Medicaid using the Miller Trust rules. If the new rule had been in place, those individuals would have qualified for Medicaid at least one month earlier. The estimated cost for these individuals to receive one additional month of LTC coverage is \$281,000. The Department receives a 70/30 match from the Federal Government, so the actual cost to Idaho would be \$84,300. These costs were previously absorbed by the individual’s family or written off by the nursing home.

MOTION

Chairman Lodge moved to approve 16-0305-0704. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 9].

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:26 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 14, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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, thanked everyone for coming and introduced guest speaker Brent Reinke, Director of the Department of Corrections.

GUESTS: See an attached sign-in sheet.

GUEST SPEAKER: **Mr. Reinke** thanked Chairman Lodge and said he would give a brief update on the Criminal Justice Commission. The "Idaho Criminal Justice Commission" was created in July of 2005 by executive order to identify and address the gaps within the Criminal Justice System in the State of Idaho.

The handout lists three measurements that Governor Otter asked for to tell if the Commission was moving in a positive way. Measure 1: Development of alternatives to incarceration (includes jails and prisons) for juveniles and adults; Measure 2: Implementation of the Sex Offender Registration and Notification Act (formerly Adam Walsh) and full review of Idaho's Sex Offender Registry; and Measure 3: Development of evidence-based programs in the management of incarcerated adults and juveniles. On Measure 2 the Commission has made some recommendations to Governor Otter and they're waiting on a response from his office with three pieces of legislation for this year and the potential for three or four more for next session, as they try to implement as much of the Adam Walsh Act as possible to be in compliance with that Act. Measure 3 is to develop evidence based programs and the goal is to bring to the Legislature each year, programs that we know are working based on research and outcomes. The reverse side of the handout shows the goals for 2007-2010. The goals are to reduce the growth rate in Corrections' populations and to reduce crime in Idaho. To meet these goals the Commission is focusing on programming, Criminal Justice System systemic issues, evidence-based early intervention and alternatives to incarceration and early childhood intervention. He briefly discussed the Criminal Justice Sub-Committees and their roles in achieving these goals and in the Criminal Justice System. This gives an idea of the scope of the Criminal Justice System. The other handout gives an idea of the type of topics that the Criminal Justice System has been working on throughout 2007. It is that caliber of work that they will be doing in 2008. He then

introduced **Dr. Mary Perrien** who gave an update on the Behavioral Mental Health Unit. They have thus far fully activated the Behavioral Mental Health Unit at one facility and have almost fully activated the Competency Restoration Unit. The programs are moving forward very well. In addition, money was set aside for planning for a secure mental health facility. During the last six months they have visited several out of state facilities to help identify what the Department is looking for in a facility. The handout shows a conceptual design by the architect as a possible rendering based on feedback from the Department of Health and Welfare and the Department of Correction. **Senator Werk** stated one early issue was the agreement between the Department of Health and Welfare and the Department of Corrections as being able to co-exist in a unit like this. While going through this planning process, are we moving toward being able to jointly operate such a facility? **Dr. Perrien** responded that yes, we are. As they've gone through the planning they have identified issues to be addressed and they are working on operational, day-to-day things to look at for developing policies, and also the organizational structure of staffing within the facility to ensure that it is a continued partnership.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1 and 2].

Chairman Lodge thanked Mr. Reinke and Dr. Perrien and then turned the meeting over to **Vice Chairman Broadsword** to begin presentation of the Rules.

RULES:

16-0309-0701

Relating to Medicaid basic plan benefits (Pending).

Paul Leary, Deputy Administrator with the Division of Medicaid, explained that this rule is consistent with House Bill 663 which was passed by the 2006 Legislature. This rule creates 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. Additionally, the rules allow a provider to collect payment for a missed appointment if that is their policy for all their patients and if they have previously notified the participant. A co-payment for non-preferred drugs was considered. However, since it would undermine the current prior authorization process and the supplemental rebate program and would be more expensive for the Department, it was not implemented.

There were no formal rule negotiations held, however, a focused policy discussion was hosted by the Department on August 22, 2006. This policy discussion was attended by Legislators, Idaho Hospital Association, Idaho Medical Association, Idaho Citizen Action Network, Idaho State Pharmacy Association, as well as some independent providers. There was general agreement and support of the Department's direction that is reflected in these rules. **Senator Hammond** asked if there is a ceiling on these co-payments? **Mr. Leary** stated that the companion rule presented next will include that information. **Senator Bair** asked if the Department has been

collecting fees from last year? **Mr. Leary** answered that this went into effect in February 2007, but the Department doesn't collect the fees, it is the relationship between the provider and the participant. **Senator Bair** asked if Mr. Leary has any knowledge of whether it has been successful, or whether there has been push-back from individuals? **Mr. Leary** responded that the way the emergency rooms were set up by the Federal Government put the responsibility on the hospitals to make sure they had done the things necessary before collecting co-payment for non-emergent use of the emergency room. To the best of his knowledge there is one hospital in the State that has attempted to use this for co-payment. **Senator Hammond** asked following on St. Bair's question, did we ere in not providing more motivation to the provider? **Mr. Leary** replied that there is more work to do in working with hospitals, emergency rooms, and with primary care physicians to put a reasonable system in place that educates patients on which services they should be using.

MOTION

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

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

16-0318-0701

Relating to Medicaid cost-sharing (Pending/Fee).

Paul Leary said this is a companion rule to 16-0309-0701. This rule is to identify which participants are subject to the co-pay provisions and to specify the co-pay amount for services inappropriately accessed by the participant. There were no formal rule negotiations held, however, a focused policy discussion was hosted by the Department on August 22, 2006. This policy discussion was attended by Legislators, Idaho Hospital Association, Idaho Medical Association, Idaho Citizen Action Network, Idaho State Pharmacy Association, as well as some independent providers. There was general agreement and support of the Department's direction that is reflected in these rules. **Vice Chairman Broadsword** asked if it is correct that the State is side-boarded in on who qualifies and who doesn't by the Federal Government? **Mr. Leary** said that is correct.

Senator Werk asked what the cost sharing would be for a potential family - is there a 5% maximum cost sharing per gross income which could be exceeded by the co-pays that might be required if emergency services are inappropriately used? **Mr. Leary** answered that in Title 19 very few individuals are even exposed to cost sharing except in the emergency room environment, but he believes 5% would be around \$150 maximum for a year. **Vice Chairman Broadsword** asked if the co-pay is \$3.00? **Mr. Leary** confirmed that is correct and is set by the Secretary as a nominal co-pay.

MOTION

Senator Hammond moved to adopt 16-0318-0701. The motion was seconded by **Senator McGee**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

Paul Leary explained that this rule amends Chapter 9 of the Medical Assistance rules to allow independent speech therapists (Speech Language Pathologists) and occupational therapists to bill Medicaid directly. In January 2007 a working committee (including interested parties, Idaho Occupational Therapy Association, Idaho Speech Language and Hearing Association, Department of Education, and the Idaho Hospital Association) was formed to confirm a need for this change and, if appropriate, develop rules to meet this purpose. The tasks of this committee were to identify and address quality issues including access and continuity of care; create service and price and examine selective contracting opportunity; and, if the Department moved forward with independent billing, create rules that establish treatment parameters and service limitations that are evidence based best practice, monitor for appropriate utilization, and assure that providers meet current State licensing and/or certification standards. Both the provider associations and the Department identified significant access issues for these services throughout the State. Waiting lists are not uncommon and could be in excess of 6 months to receive services. The decision was made to move forward and develop rules.

After reviewing best practices related to each service and current service limitations the Committee recommendation was to change limits for speech therapy from 250 visits per year to 40 visits per year, and set occupational therapy limits to 25 visits per year. After these limits are reached further service must be prior authorized by the Department (the Department uses InterQual criteria for prior authorization). To assure that qualified providers are delivering therapy services, all providers of these services are required to meet the rules and licensure specific to their professions. Section 730 of these rules previously defined as "Physical Therapy Services" was amended to cover not only Physical Therapy, but also Occupational Therapy and Speech Language Pathology Services. This section is now referred to as "Therapy Services." The amended rules were reviewed with members of the Idaho Physical Therapy Association and met with their approval. The Department has reviewed and considered the public comments submitted for this rule. It is the Department's intent to monitor and review requests for prior authorizations to assure that services are meeting the medical needs of participants.

Vice Chairman Broadsword asked for clarification on the process of pre-authorization. **Mr. Leary** replied that a request goes in by phone or fax to a medical review unit. There is a 24-hour turn around time. **Vice Chairman Broadsword** asked who sits on the review board; if a patient needs speech therapy is a speech therapy expert consulted? **Mr. Leary** replied that the review board is staffed with Registered Nurses (RNs), but they use standing National criteria (InterQual) and it is very common for people to use RNs in this capacity. If there is a question, a Medical Director that is available to look at the service as well. **Senator Bair** had a constituent contact him who has a developmentally handicapped child who has been receiving speech pathology help, but when this 40 visit rule came the visits ended. How will this not happen, and how can this be in the best interest of the client? **Mr. Leary said** this rule is not in place at this time. The current rule has a hard limit on it, so if the client hits 250

visits, the service ends. This rule allows prior authorization for medically necessary services, so if the services are needed they will be authorized and can be authorized for the balance of the year if needed. **Senator Werk** asked what is the basis for the limits on service? **Mr. Leary** responded that the Committee looked at what would be reasonable for prior to prior authorization, and the Department wants to be sure that 80% of individuals that need this service fall in the number prior to needing prior authorization. **Senator Werk** asked do you use evidence based on criteria from medical studies that tell you what the limits are on your therapy to provide the outcome you're looking for? **Mr. Leary** deferred the response to someone testifying from the Association who can report on the best practices, evidence based medicine part of this criteria.

Becky Pierce, Speech Language Pathologist and Pediatric Outpatient Rehabilitation Director, testified regarding this issue. A synopsis of her comments is that the American Speech and Hearing Association National Outcome Measures state that increased therapy visits from Speech Therapist equals greater outcomes for children. Why are we working to decrease this so drastically? **Vice Chairman Broadsword** restated that Mr. Leary stated prior authorizations have a 24-hour turnaround, and hospitals would probably be less than that. **Ms. Pierce** stated that she has a large case load and feels the 100 visit limit is more reasonable. **Senator Darrington** asked specifically what rule number this is referring to. **Chairman Lodge** said #297 Service Limitations 04B. **Vice Chairman Broadsword** asked Mr. Leary if a therapist can receive prior authorization for a child before the 40 visits expire if the child has a condition that is known to require more than 40 visits? **Mr. Leary** said yes. **Senator Coiner** asked how much time is used in getting pre-authorization? **Mr. Leary** stated that it is a very quick process. **Senator Darrington** asked if the reason for this rule is to get after those who are milking the system? **Mr. Leary** stated it is to prevent people from milking the system.

Senator Werk asked is it a simple process if a physician disagrees with the judgement of the review board? **Mr. Leary** answered that it is simple - if there is a dispute it gets escalated to the Medical Director, and the Department will monitor whether they are approving the majority of services above the 40 visits and they will adjust the limit if so. **Chairman Lodge** asked how many of these cases go through hospitals, she thought most go through schools. **Mr. Leary** said now they come through out patient hospitals, school based services, or developmental disability agencies. None are done by independent practitioners. **Chairman Lodge** asked if she could get access to the InterQual standards? **Mr. Leary** said yes, they are online. **Senator McGee** asked the extent to which Mr. Leary communicated to the groups involved? **Mr. Leary** replied that the meetings were wide open. This process began through a request for rule writing by the Occupational Therapy Association. The Department met with them, the Speech, Language and Hearing Association, who published this in their newsletter online. **Senator Darrington** asked if these services are provided by Masters-level Speech Pathologists, who are professional people, what is the difference whether they decide to extend visits or they call to get authorization when you've already said that

the visits will be granted if the Speech Pathologist says they are needed?
Mr. Leary replied that National criteria will be used.

Linda Jackson, Executive Director of Idaho Occupational Therapy Association, expressed support for 16-0309-0706 and the companion rule 16-0310-0704 on behalf of the Occupational Therapy Association. They were part of the Committee invited to help research and advise the Department on these rules. She explained the process the Committee used in determining the 40 visit limit and said they believe these rules provide greater access, better outcomes and more efficient services for Medicaid patients. **Senator McGee** asked how the Association communicates with members? **Ms. Jackson** responded they use postings on their web site, e-mail alerts, their newsletter, and direct mail. **Steve Millard**, President of Idaho Hospital Association, stated they have no argument with how the Department got the word out on this rule, but the problem came with communication within the hospital. The Hospital Association has issues with the 40 visit limit. The Hospital Association will track this and will come back to the Department about changing this visit limit.

Tammy Emmerson, Idaho Speech and Hearing Association and is the State Advocate for State insurance reimbursement, stated that the Idaho Speech and Hearing Association supports the 16-0309-0706. They were assured that prior authorization time period and paperwork would not be cumbersome, and support this rule because they want to make sure there is no Medicaid fraud.

MOTION

Senator McGee moved to adopt 16-0309-0706. The motion was seconded by **Chairman Lodge**. **Senator McGee** stated he is for adoption of this rule because Mr. Millard committed to monitoring this rule and Mr. Leary clearly did everything he could to communicate with those affected. **Senator Darrington** offered a substitute motion to approve 16-0309-0706 excluding #297B because that portion increases bureaucracy and he feels authorization should come from Speech Pathologists. **Vice Chairman Broadsword** spoke in favor of the original motion. Medicaid reform must begin somewhere. Forty Speech Pathology visits may not be the optimum, but it is a start and can be modified if proven to be too few. The substitute motion failed by **voice vote**. The original motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

16-0310-0704

Relating to Medicaid enhanced plan benefits (Pending).

Paul Leary stated this rule amends Chapter 10 of the Medical Assistance rules to be consistent with Therapy Services changes of 16-0309-0706. The changes in this rule are specifically in Section 653, DDA-Services-Coverage and Limitations and refer back to the coverage and limitations in Chapter 9 of the Medical Assistance rules. The changes in this rule assure that participants receive the same coverage and service limitations regardless of place of service.

MOTION

Senator Coiner moved to accept 16-0310-0704. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

16-0309-0707

Relating to Medicaid basic plan benefits (Temporary).

Paul Leary explained that consistent with House Concurrent Resolution 51 passed by the 2006 Legislature, these rules designate that the dental benefit for Medicaid participants on the Basic Benefit Plan are provided by a selective or managed contract. The only public comment received requested clarification that pregnant women were included in this dental program. They are, and the rules were clarified. **Senator Werk** asked if dental providers can bill for missed appointments under this rule change? **Mr. Leary** answered that they can't charge any extraordinary charges to a Medicaid patient, but they can treat Medicaid patients consistent with all patients and have that understanding before they charge Medicaid. **Vice Chairman Broadsword** asked if the actual reimbursement rate has increased 9.9%? **Mr. Leary** replied that because of the limitations for healthy patients and because they are outsourcing the services, they were able to increase reimbursement rate 9.9% for children and a little over 5% for adults.

MOTION

Senator Werk moved to approve 16-0309-0707. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

16-0310-0705

Relating to Medicaid enhanced plan benefits (Temporary).

Paul Leary stated that this rule is a companion to 16-0309-0707. This rule covering dental benefits provided through Medicaid have been moved from Chapter 9, Medicaid Basic Plan of the Medical Assistance Rules, to Chapter 10 that covers the Medicaid Enhanced Plan. **Senator Werk** asked if this sets minimum parameters for private coverage? **Mr. Leary** replied no. They chose not to include enhanced plan participants in the outsourced plan because it may not accommodate their needs.

MOTION

Senator Darrington moved to adopt 16-0310-0705. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8].

16-0309-0704

Relating to Medicaid basic plan benefits (Pending).

Paul Leary explained that this rule amends Medicaid Basic Plan of the Medical Assistance rules in Chapter 9 to state that authorization and coverage for surgically implanted hearing aids will occur only after there is documented evidence that a non-implantable hearing aid cannot meet the

medical needs of the participant. No comments in opposition to this rule were received. **Senator Darrington** asked if this is a different procedure than the Cochlear? **Mr. Leary** stated yes, it is a different procedure.

MOTION

Senator Darrington moved to adopt 16-0309-0704. **Chairman Lodge** seconded the motion. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 9].

16-0309-0705

Relating to Medicaid basic plan benefits (Pending).

Paul Leary explained that this rule amends Chapter 9 of the Medical Assistance rules to add a Pay for Performance enhanced management fee for Healthy Connection Providers that enroll their Medicaid participants in the Disease Management Program. This program is being phased in and the specific chronic diseases included in this program are: diabetes, asthma, hypertension, hyperlipidemia, and depression. He introduced **Dr. Donald Norris**, Medical Director for Medicaid, who spearheaded the program is in attendance to answer questions. In addition to the pay for performance program this rule removes the referral number requirement for anesthesiology service, laboratory services and radiology services. A hearing held in October 2007 was attended by department staff only. **Chairman Lodge** asked for a definition of hyperlipidemia? **Dr. Norris** stated that it is a fancy name for high cholesterol.

MOTION

Senator Coiner moved to adopt 16-0309-0705. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 10].

16-0310-0701

Paul Leary explained that this rule adds additional language 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. This rule also amends the Medical Assistance State Plan as approved by the Centers of Medicare and Medicaid to remove the requirement for a physician's order for personal care services (in accordance with Senate Bill 1339).

MOTION

Senator Bair moved to adopt 16-0310-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 11].

16-0310-0702

Paul Leary explained that this rule amends the rejected sections of Senate Concurrent Resolution 112 approved by the 2007 Legislature (Section 112, Subsection 02.d and 03.a as presented in 16-0310-0602) to meet the needs of individuals requiring enhanced outpatient

psychotherapy while retaining the more restrictive eligibility requirement for Psychosocial Rehabilitation and Partial Care. The following changes were made: 1. to be eligible to receive Enhanced Plan mental health services for psychotherapy, adults must meet the eligibility criteria of "serious mental illness," as defined in Federal regulations; 2. children must meet the eligibility criteria of "serious emotional disturbance," as defined in Section 16-2403 of the Idaho Code; and 3. for eligibility determination for Enhanced Plan mental health services for psychotherapy, the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition will be used for both children and adults along with a comprehensive assessment. No additional public comments were received on this rule.

MOTION

Senator Werk moved to adopt 16-0310-0702. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 12].

16-0309-0702

Relating to Medicaid basic plan benefits (Pending).

Larry Tisdale, Bureau Chief of the Financial Operations Bureau in the Division of Medicaid, explained that this rule defines and describes the methodology used by the Department to determine interim and permanent reimbursement rates for new Federally qualified Health Centers (FQHCs) and existing FQHCs that make changes in the scope of services they provide. Negotiated rulemaking was conducted in drafting this rule - the Idaho Primary Care Association was involved with the Department. This rule was published and no comments were received during the comment period. **Senator Darrington** asked if these FQHCs are such as the Reilly Clinics around the State? Also, are these compliance rules with Federal requirements? **Mr. Tisdale** said yes they are for both questions. **Senator Werk** asked if there were comments from the FQHCs during the process? **Mr. Tisdale** answered that the FQHCs are members of the Idaho Primary Care Association and were actively involved in the process.

MOTION

Senator Darrington moved to adopt 16-0309-0702. **Chairman Lodge** seconded the motion. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 13].

16-0309-0703

Relating to Medicaid basic plan benefits (Pending).

Larry Tisdale explained that this rule changes the definition of reimbursement floor percentage for hospitals with more than 40 beds to 81.6% of Medicaid costs and the reimbursement floor percentage for hospitals with 40 or fewer beds to 96.5% of Medicaid costs. The Idaho Hospital Association worked with the Department during the negotiated rulemaking process. This rule was published and no comments were received during the comment period. **Senator Darrington** asked if this rule is a compliance rule for small hospitals in Idaho that seek Critical

Access? **Mr. Tisdale** answered yes, the 40 beds and fewer were drafted around that designation. **Vice Chairman Broadsword** stated that to be a Critical Access Hospital they must be 25 beds or fewer so there is a little wiggle room there.

MOTION **Senator Coiner** moved to adopt 16-0309-0703. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 14].

16-0317-0701 Relating to Medicaid/Medicare coordinated plan benefits (Pending).

Larry Tisdale stated that this rule is for qualified individuals that are enrolled in both Medicare and Medicaid, commonly referred to as Dual Eligibles who choose to enroll in this benefit plan. Dual Eligibles will receive coordinated and integrated benefits offered by a participating Medicare Advantage Organization (MAO). The Medicaid program will pay an actuarially certified premium for coordinated services commonly covered by Medicare and Medicaid, and for integrated services not commonly covered by Medicare benefits, but have been integrated into the MAO's coverage for this benefit package. Three hearings were conducted across the State for these rules. One attendee was present at one hearing. These rules were published and no comments were received during the comment period. **Vice Chairman Broadsword** asked if this is a cost savings to the State? **Mr. Tisdale** replied yes, that is correct.

MOTION **Chairman Lodge** moved adoption of 16-0317-0701. The motion was seconded by **Senator Coiner**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 15].

MOTION **Senator Werk** moved that the minutes of January 9, 2008 with the changes associated with Madame Chairman during the Rules process becoming Senator Lodge and Senator Broadsword becoming Chairman. **Vice Chairman Broadsword** seconded the motion. The motion was carried by **voice vote**.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:42 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 15, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: See an attached sign-in sheet.

CONVENED: **Chairman Lodge** called the meeting to order, thanked everyone for coming and introduced guest speaker former Representative Kathie Garrett, Co-Chair of the Idaho Council on Suicide Prevention.

GUEST SPEAKER: Former Representative Kathie Garrett thanked Chairman Lodge and the Committee and introduced Dr. Peter Wollheim, the other Co-Chair and one of a few handful of people who are experts on suicide prevention here in Idaho. She introduced other members of the Council on Suicide Prevention present. Suicide Prevention is an important issue because Idaho continues to rank 6th highest in the Nation in suicide, a rate that is 51% higher than the National average. The Council believes that suicide in Idaho is a preventable public health problem. Their plan has four main goals: First is Infrastructure - The Council recommends that the Council be retained with membership and focus as set forth in the Executive Order establishing the Council, become a subcommittee of the State Mental Health Planning Council and be provided with funding for the Idaho Council on Suicide Prevention to coordinate leadership and implementation of the Idaho Suicide Prevention Plan. Second is Awareness - Veterans are twice as likely as the general population to die from suicide. The Council recommends funding and support for regional and local suicide prevention efforts to provide ongoing outreach to veterans and others including awareness and training activities. The Council further recommends that the Governor's Office conduct a summit in 2008 regarding the issue of veterans and suicide. Third is Implementation - The Council recommends that Idaho secure funding to reestablish and maintain a suicide hotline as the foundation for preventing deaths by suicide in the State. Fourth is Methodology - The Council recommends that specific actions be taken to improve current data reporting and sharing related to capturing accurate numbers of attempted and completed suicides in Idaho. Dr. Willheim put together six recommendations on how to improve the data collection system to have a better baseline.

Vice Chairman Broadsword thanked Ms. Garrett for outlining not only

the problems, but possible solutions. Is there a solution to under reporting Statewide level? **Ms. Garrett** responded that they have identified where they can get better data, the next step is to determine how to bring these groups together. **Dr. Willheim** stated that it would help to have a standardized reporting form for coroners, hospitals and insurance companies. There are ways to protect individual identity of patients in those instances. **Ms. Garrett** said they will be working on this. **Vice Chairman Broadsword** suggested that Ms. Garrett also give this presentation to the Associations that meet in Boise - most will be here the first week in February (Sheriffs, Counties, Coroners). She also asked if the Council is working with the Division of Military and Veterans Services to address the Veteran aspect? **Ms. Garrett** reported that she is. This issue is being recognized Nationally.

Chairman Lodge thanked Ms. Garrett and then turned the meeting over to **Vice Chairman Broadsword** to begin presentation of the Rules.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

RULES:

16-0612-0701

Relating to Idaho child care program (ICCP) (Pending).

Genie Sue Weppner, Program Manager for the Division of Welfare, explained that this rule will increase costs, but this increase will be covered by rule changes that will decrease spending. The cost increases come from two areas. First from an increase in the eligibility limits which are currently at 80% of the Federal poverty level. Secondly, this rule makes the ICCP co-pay structure more gradual - to increase by not more than 5%. This enables families to accept promotions and pay raises without fear of substantial increases in their share of child care costs. The third change creates the cost savings by limiting post-secondary education as an eligible activity to 40 months; limit work search as an eligible activity to no more than the month following the loss of a job through no fault of their own; and utilize savings currently occurring because the ICCP caseload is dropping due to extremely low eligibility limits. The rules have also been reorganized for alignment, language and readability. These changes came as a result of recommendations from the Idaho Child Care Advisory Panel, the Office of Performance Evaluation, the State Legislative Auditor and a Stakeholder group made up of representatives of higher education, family advocacy groups and students. **Senator Hammond** and **Vice Chairman Broadsword** thanked Ms. Weppner for the hard work on these rules. **Senator Hammond** asked if post secondary degree is for a Bachelors Degree? **Ms. Weppner** answered that it can be for whatever education the individual wants. **Senator Hammond** noted that now days a degree typically takes 48 months instead of 40 months. **Ms. Weppner** answered that the Committee discussed this and decided there was a need to create a sense of urgency. **Vice Chairman Broadsword** added that this is under the Temporary Assistance for Families in Idaho (TAFI) and is for the working poor, not necessarily for those people who are going to school.

Senator Kelly asked for clarification of the cost savings explanation. **Ms. Weppner** explained that raising the eligibility limits to 135% of the 2007 poverty level and adding the gradual co-pay will cost about \$4 million per year. To cover that cost they are cutting the number of months eligible for work search, cutting the number of months eligible for post secondary education. **Senator Werk** asked about Section 800 Licensing, and Section 802 Health and Safety. Do they apply to every organization no matter how small? **Ms. Weppner** replied that yes everyone must have a Health and Safety inspection every year and they must take a CPR First Aide Class - they do not have to be licensed but have to follow the rules of the area in which they live regarding licensing. **Senator Werk** noted that Criminal Background Checks are not listed in the Health and Safety requirements. Was thought given to that in the process? **Ms. Weppner** replied that they are meeting now regarding this issue and plan to come to the Legislature in the future with this requirement.

MOTION

Senator Werk moved to approve 16-0612-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

16-0612-0702

Relating to Idaho child care program (ICCP) (Pending/Fee).

Genie Sue Weppner explained that this rule will result in savings to allow the Department to adjust reimbursements to providers, improving the market rate by making two changes. First, they require individuals applying for child care to cooperate with child support. This reinforces the Welfare Reform philosophy that absent parents are responsible for their child's financial well-being and reduce dependency on Welfare programs. It also reduces opportunities for fraudulent use of child care assistance. Secondly, the ICCP will require participating, non-working students to pay a co-pay that is equal to or less than the average co-pay paid by working students (scholarships, grants and loans are not counted as income for ICCP). **Vice Chairman Broadsword** asked about 503 on page 67 - Individuals with English as a 2nd language don't pay? Why did they treat different ethnic backgrounds differently? **Ms. Weppner** said this Section isn't a change from the previous rules. Possibly these individuals don't have the scholarships and loans that non-working students would normally have. **Senator Werk** inquired regarding the increase in rate paid to providers, can providers balance-bill for what the Department doesn't cover? **Ms. Weppner** gave an example as explanation: if the provider charges \$400, the Department pays \$200, but there is a \$50 co-pay, so the Department actually pays \$150. The provider is supposed to charge the full amount, and the parent is supposed to pay the full amount. **Senator Werk** stated that in essence that is balance-billing. If the co-pay is increased, and the rate paid to the provider is increased, what is the result going to be? He stated he would like to make sure that the cost to the participant doesn't simply increase - that the provider doesn't simply balance-bill for a higher amount. **Ms. Weppner** said the Department cannot set the market rate at more than the 75th percentile. That is aimed at not driving the cost of childcare up. Also, they are not raising the co-pay

they are trying to make the co-pay changes gradual and income goes up. Most participants will see their co-pay drop a bit. The hope is that, by raising the amount the Department pays, the amount the participant pays grows smaller. The trend has been that more and more providers won't even take ICCP participants because the parents can't afford the cost of child care. These changes will help remedy this. **Senator Werk** asked if the intent of the Department is to evaluate this data as these rules go into effect to make sure the impact is what was intended. **Ms. Weppner** answered that it is.

MOTION

Senator Hammond moved to adopt 16-0612-0702. The motion was seconded by **Senator McGee**. **Senator McGee** and **Chairman Lodge** commended Ms. Weppner for her work on this rule. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

16-0303-0801

Relating to child support services (Temporary).

Kandace Yearsley, Child Support Bureau Chief for the Department of Health and Welfare Division of Welfare, explained that this rule is to assess the annual \$25 fee from the Non-Custodial parents. This is required by the Federal Deficit Reduction Act of 2005 for each child support case for which the State collects \$500 or more in payments during the Federal fiscal year. This is not assessed to families who have received Temporary Assistance for Needy Families (TANF or TAFI) in Idaho, nor does it apply when the parent paying the fee has an open food stamp case in Idaho. From October 1, 2007 until December 6, 2007, when collection was ceased, this fee had been collected from custodial parents once their case had received \$500 or more in collections. After receiving public comment, the Department believes it is in the best interest of and has the least negative impact to Idaho children to assess this Federally mandated fee to non-custodial parents. **Vice Chairman Broadword** asked if this fee is in addition to child support and if so, how is it collected? **Ms. Yearsley** answered yes it is in addition and is collected in the same way as child support. **Chairman Lodge** asked how much was collected before this rule was changed and how will it be refunded? **Ms. Yearsley** answered approximately \$300,000. It will be direct deposited back into the bank accounts of the families that paid the fees. **Senator Darrington** stated that, because this is a Federal law, we can do nothing about it except pay it and there is no painless way to comply. He feels it is better to put the fee on the non-custodial parent and feels we must now just forge ahead and do it. **Senator Werk** said he, too, feels this part of the Federal Deficit Reduction Act is senseless. Another option for payment of this fee is to pay it from the General Fund of the State. **Senator Kelly** asked what the total amount to be paid to the Federal Government is? **Ms. Yearsley** answered approximately \$570,000. **Senator Kelly** asked what percentage of non-custodial parents are behind in child support? **Ms. Yearsley** answered that approximately 34,400 cases qualify for this fee. Of that, approximately 6,700 are current in their child support obligations and approximately 28,000 are not

current. **Senator Kelly** asked when the \$570,000 was calculated did you take into account the 28,000 who don't pay. **Ms. Yearsley** said the 28,000 are those who aren't current, not necessarily that they aren't paying. **Senator Kelly** said that it sounds like we may be giving incentive for nonpayment and asked Ms. Yearsley what she thinks? **Ms. Yearsley** answered that the Department believes that it is in the best interest of the children to charge this fee to the non-custodial parent. The goal of the program is to collect funds for the children and the Department will continue to work hard to make sure that the money gets to those kids. **Chairman Lodge** asked how many hunting licenses does the Department pull each year from those that are behind in their payments, and what are other methods the Department can use to encourage payment? **Ms. Yearsley** replied that she doesn't have the number before her, but the Department pulls thousands of licenses each year from those who do not pay. Other methods they use are financial institutions data matches (multi-state) and wage withholding. They are constantly looking for methods to increase the amount of money collected for the children.

MOTION

Senator Darrington moved for adoption of 16-0303-0801. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**. **Senator Kelly and Senator Werk** voted no.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

16-0310-0703

Relating to Medicaid enhanced plan benefits (Pending).

Sharon Duncan, Bureau Chief for the Division of Medicaid Long-Term Care Program, explained the this rule will streamline the entitlement process for Medicaid nursing home participants and providers by eliminating an extra conversion step in participant assessments. It will also move the Uniform Assessment Score rules from the Nursing Facility section to the Aged and Disabled Waiver section. Informal discussions were held with the Idaho Healthcare Association and no public hearings were held. **Senator Werk** said 23301 talks about required assessments for adults, is the Department going to have a single standard assessment? **Ms. Duncan** answered yes it is but is for nursing facilities only. **Senator Werk** asked is the assessment tool the same for everyone or are you trying to not duplicate by receiving assessments and approving? **Ms. Duncan** said the assessment tool for nursing homes will be the Minimum Data Set (MDS); the assessment tool for people receiving personal care services under the Aged and Disabled Waiver will be the Uniform Assessment Instrument (UAI).

MOTION

Senator Bair moved adoption of 16-0310-0703. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

16-0323-0701

Relating to uniform assessments for State-funded clients.

Sharon Duncan explained that this rule is a companion to 16-0310-0703 and is intended to eliminate the extra conversion step so that a participant's assessment data can be directly used to determine medical eligibility for nursing facility level of care. This simplifies the process, improves efficiency by a minimum of two weeks, yet maintains the same level of accuracy. Two changes are needed to the Enhanced Plan Benefits chapter for Nursing Facility Entitlements: 1. The term "Nursing Facilities" is being removed from the definition of supported living services provider; and 2. The reference to the use of the Uniform Assessment Instrument (UAI) for nursing facility resident reassessments is being removed. Informal discussions were held with the Idaho Health Care Association; no public hearings were held. **Senator Bair** asked why no hearings were held? **Ms. Duncan** responded that they anticipated no problems because it gets folks eligible for nursing home care two to three weeks sooner than in the past, and because the Association brought this to the Department's attention and they worked with them.

MOTION

Senator McGee moved to adopted 16-0323-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

16-0310-0706

Sharon Duncan explained that these rule changes align the Medicaid Enhanced Plan rules for Personal Assistance Service Agencies with Idaho Code - House Bill 167, which clarified the difference between a Personal Assistance Service Agency and a Fiscal Intermediary Agency. The Department would like an extension of this rule. This rule change is a result of discussions with the State Independent Living Council. A public hearing was held on November 20, 2007 and no comments were received. **Vice Chairman Broadsword** asked why is this being extended as a temporary rule instead of a pending rule? **Ms. Duncan** answered because of timing that they put the change in for the rule to be updated.

MOTION

Senator Werk moved to adopt 16-0310-0706. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

16-0314-0701

Relating to rules and minimum standards for hospitals in Idaho (Temporary).

This rule was held because the docket number is incorrect.

16-0309-0708

Relating to Medicaid basic plan benefits.

Pat Guidry, Program Manager of the Office of Mental Health and Substance Abuse in the Division of Medicaid, explained that this temporary rule allows physicians to perform telemedicine mental health services in any location in which they are already allowed to practice. Medicaid has allowed reimbursement for these services in mental health clinic settings only since 2004. There has been zero utilization to this date

most likely because mental health clinic proprietors have not invested in the hardware and software required to deliver the services. This rule allows telemedicine to be used in locations that already have the equipment (usually hospitals). Three services to be delivered through telemedicine are psychiatric diagnostic interview, evaluation and management with brief psychotherapy, and pharmacological management. Medicaid has published an Information Release this month that outlines the specifications for ensuring HIPAA compliance for privacy and the requirements for meeting quality of care standards. The fiscal impact is expected to be minimal. **Vice Chairman Broadsword** asked if this is the framework, but no participants? **Ms. Guidry** replied that there are currently two physicians in Idaho using this technology.

MOTION

Senator Hammond moved to adopt 16-0309-0708. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8].

16-0309-0709

Relating to Medicaid basic plan benefits.

Pat Guidry explained that this is a temporary rule to allow qualified mental health providers to offer outpatient family therapy sessions without the participant present. This treatment is endorsed as an evidence-based practice from the Substance Abuse and Mental Health Services Administration (SAMHSA). An existing benefit, collateral consultation, was modified so that it could be performed telephonically in mental health clinics (it was previously required to be conducted face-to-face). Collateral contact service as a method to meet with multiple families in a support group was eliminated. Medicaid has worked with the Mental Health Provider' Association and other independent mental health agencies to craft this rule. **Chairman Lodge** asked about 710 3C on page 40, what is Practitioner of Healing Arts? **Ms. Guidry** replied that Idaho statute defines that term as persons who are licensed to perform clinical services, however, the use of the term became mid-level practitioners which refers to physician assistants and nurse practitioners.

MOTION

Senator Werk moved to approve 16-0309-0709. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 9].

16-0310-0707

Relating to Medicaid basic plan benefits.

Pat Guidry explained that this rule is the same rule as 16-0310-0709 but this rule is for the enhanced plan.

MOTION

Senator Darrington moved to adopt 16-0310-0707. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

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

9].

Vice Chairman Broadsword turned the meeting back to **Chairman Lodge** who asked **Secretary Dombrowski** to clarify the procedure for rules as explained to her by Senate Secretary Jeannine Wood. When Senator Lodge turns the rules to be presided over by Senator Broadsword, Senator Broadsword does not become Chairman of the Committee. **Senator Darrington** said that there is no legal consequence either way, it is the Chairman's call. **Chairman Lodge** said we will follow the procedure as explained to Secretary Dombrowski.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:42 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** January 16, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Werk, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Bair
- CONVENED:** **Chairman Lodge** called the meeting to order.
- MOTION:** **Senator Hammond** moved to accept the minutes of January 10, 2008 meeting. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.
- Chairman Lodge** turned the meeting over to **Vice Chairman Broadsword** to begin presentation of the Rules.
- RULES:**
- 16-0601-0701** Relating to Family & Children's Services.
- Shirley Alexander**, Child Welfare Program Manager in the Division of Family and Community Services of the Department of Health and Welfare, explained that Idaho Code, Chapter 16, of the Child Protective Act mandates that the Department maintain a Central Registry that contains the names of individuals for whom a report of child abuse, abandonment or neglect has been substantiated by the Department. These rule changes amend the Child Abuse and Neglect Central Registry process to allow an individual to petition the Department to remove his/her name from the Central Registry according to minimum time frames established by the level of severity or safety threat the individual poses to children. Prior to this rule change, if an individual has a substantiated report, their name remains on the Child Abuse and Neglect Central registry permanently. Notice of this rule change has been printed and public hearings were held in September 2007. There were no responses during any of these hearings; however the Department has had positive feedback from the Supreme Court Child Protection Court Improvement Committee and from a local public defender.
- Senator Kelly** asked what due process is used in putting people on the list? **Ms. Alexander** replied after a substantiated report of abuse, abandonment or neglect of a child, the individual is sent a letter informing them that their name is on the Registry and explaining the process by which they could be taken off the Registry (explained in IDAPA 160503). **Senator Kelly** stated that this process seems much more subjective than

the Sex Offender Registry List which requires an individual be convicted of a crime before they are placed on the list. How is this being documented - it seems that people get on by default and their only due process is to appeal off of the list? **Ms. Alexander** said there is criteria for receiving a substantiated report. According to the criteria, substantiated means it must be witnessed by a Family Services worker; it could be a Court determining that a child comes within the jurisdiction of a Child Protective Act - 80% of these are determined by a Court; a confession corroborated by physical or medical evidence; or established by evidence that would lead a reasonable person to conclude it is more likely than not that abuse, neglect or abandonment have occurred. The levels come after the substantiated report.

Chairman Lodge stated that she and Senator McGee were given information of some concerns about this rule. One concern is the term "reasonable person" - what is reasonable for one person may not be reasonable for another. **Ms. Alexander** answered that this is a definition that attorneys use. They are referring to presenting evidence to a group of people, more than likely they would agree that it would or would not be substantiated. **Chairman Lodge** said the concern is that to be placed on this list without really being found guilty is a concern. **Ms. Alexander** stated this is very different than the Sex Offender Registry and is why the letter is sent explaining due process up front.

Vice Chairman Broadword asked Ms. Alexander to explain again who is impacted by this? **Ms. Alexander** answered it is certain people with select employment who have contact with vulnerable children - examples are foster parents and people who want to adopt children.

Senator Kelly stated it looks as though there is no notification before you get on the list, no avenue to appeal before being placed on the list? **Ms. Alexander** deferred to her Director, Michelle Britton.

Michelle Britton, Director of Division of Family and Community Services with the Department of Health and Welfare, stated that there is one step before the individual even goes to the administrative hearing. The individual is sent a letter informing them they will be placed on the registry, the reasons for the placement and information about what to do if they disagree. They can then notify the Department who will then do another administrative check (by the manager and the director). In some instances it gets pulled at this point. If it isn't pulled at that point, the individual can then file for a contested case hearing or an administrative hearing to challenge the decision. **Senator Kelly** asked where is this information? It isn't here (in the rule change papers). **Ms. Alexander** responded that it is in the rules governing contested case proceedings in a separate section in a separate rule - IDAPA 160503. **Senator Kelly** said she doesn't see where there is an appeal process before a person is placed on the list.

Senator Hammond stated it is important not to get so wrapped up in protecting the rights of the abuser that we forget the main purpose here is to protect the children. If we don't have a pretty secure list, and an abuser obtains a position where he/she can abuse again, then we will fault the

Department for not having a list together to protect those children.

Vice Chairman Broadsword stated that there are enough questions to warrant postponing voting until the Committee has time to do a little more research on this rule.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

16-0505-0701

Relating to criminal history and background checks in long-term care settings.

Mond Warren, Bureau Chief of the Bureau of Audits and Investigations, explained that three years ago the Legislature approved the Department to participate in a Federal pilot project to conduct background checks on individuals working in long term care settings. He gave a brief report on the project including the use of Federal funds to build a new web based system for processing background check applications and implementing Live Scan technology for fingerprints which increased application turnaround times from 6-8 weeks to as little as 2 days. The pilot project ended on September 30, 2007 and was a success. The continuation of background check requirements for many long term care providers has already been approved this year. This is a repeal of the rules related to participation in the project. **Chairman Lodge** commended Mr. Warren for the work he did on the project.

MOTION

Senator Werk moved to accept 16-0505-0701. **Senator McGee** seconded the motion. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

16-0506-0602

Relating to criminal history and background checks (Rewrite).

Mond Warren explained that these rules for criminal history and background checks were approved as temporary rules last year by the Legislature, however a few changes have been made to the rules after receiving public comment. The changes are clarifications; the addition of classes of individuals inadvertently left out of these rules in Section 100; and a process change in section 200 to allow an individual to challenge the Department's findings and provides better due process for the applicant.

MOTION

Senator Hammond moved to accept 16-0506-0602. The motion was seconded by **Chairman Lodge**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

16-0506-0601

Relating to rules governing mandatory criminal history checks (Repeal).

Mond Warren explained that this docket is a repeal of criminal history rules approved by the Legislature last year, however, they must be

approved this year as pending rules.

MOTION

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

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

16-0501-0701

Relating to use and disclosure of Department records.

Jeanne Goodenough, Chief of the Human Services Division of the Attorney General's Office and representative for the Department of Health and Welfare, explained that these rule changes are in the Use and Disclosure of Department Records chapter. They are a result of law changes or clarifications. The first change is with Rule 051 regarding an authorization from an individual to release information. Some statements required by the HIPAA regulations were not listed in the rule. The second change is a result of a law change last year to provide that someone who complains about a situation in a certified family home will have their identity protected, with certain exceptions. The third change is a deletion of provision for the "Do Not Re-Release" stamps used prior to HIPAA and are no longer needed. The fourth change deleted original language allowing broad disclosure in police investigations because there are other specific provisions for police in HIPAA. The fifth change is regarding records of decedents was clarified as to personal representatives of estates to make clear that their authority to request information is limited to their function as personal representatives. In the final change a citation for the protection and advocacy agencies was added. **Senator Werk** asked what are the records we're talking about? **Ms. Goodenough** replied anything that the Department maintains. Sometimes there are references to health information (those are the HIPAA material) but there are many other confidentiality requirements in State code so we are trying to combine them, at the Director's suggestion, into one cohesive rule. **Senator Werk** asked if a person dealt with, or didn't deal with some rules regarding getting onto a list, disclosure of that information would be governed by this rule? **Ms. Goodenough** replied it wouldn't be declared specifically, but it would tell how to deal with the registry which is confidential.

MOTION

Chairman Lodge moved acceptance of 16-0501-0701. The motion was seconded by **Senator Hammond**. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

Vice Chairman Broadsword noted that Scott Tiffany with Behavioral Health was not present because he is presenting in the House. His presentation will be rescheduled.

19-0101-0701

Relating to rules of the State board of dentistry.

Arthur R. Sacks, Executive Director of the Idaho Board of Dentistry, said this rule will increase two types of fees. The first is for applications -

dental license application fees increase from \$100 to \$300; and dental hygienist application fees increase from \$50 to \$150. The second is for biennial license fees - dentists active fee will increase from \$300 to \$375; dentist inactive status will increase from \$150 to \$160; dental hygienist active fee will increase from \$140 to \$175; and the dental hygienist inactive fee will increase from \$80 to \$85. A hearing was held on October 17, 2007 and no one attended. The Board received no public comments, and officers and members of the Idaho State Dental Association and the Idaho Dental Hygienist's Association expressed no objections. **Vice Chairman Broadsword** commented that the Committee approved them to go to a biennial system last year and now you found that you're going to be short of money in a few years - is that correct? **Mr. Sacks** replied yes. When they went to the biennial fee they didn't increase fees, and have not raised fees for quite some time, and the cost of doing business has increased. **Vice Chairman Broadsword** asked will you be bringing your budget before the Joint Finance Appropriations Committee, and with the increase in fees is there a corresponding increase in expenses? **Mr. Sacks** replied yes to both questions. **Senator Darrington** acknowledged Mr. Sacks as the new Executive Director, and noted that it appears inspections, complaints, and investigations are relatively constant even though costs have gone up. **Mr. Sacks** said yes, they have been stable and costs have gone up, but they also have more office reviews. **Chairman Lodge** commended Mr. Sacks for the good job in putting the rule book together.

MOTION

Senator Darrington moved to accept 19-0101-0701. **Chairman Lodge** seconded the motion. The motion was carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:59 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 17, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Bair

CONVENED: **Chairman Lodge** called the meeting to order and introduced **Richard Armstrong**, Director of the Department of Health and Welfare, who will introduce the Gubernatorial Appointments.

GUBERNATORIAL APPOINTMENT **Richard T. Roberage** of Caldwell was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

Chairman Lodge said Dr. Roberage has a very fine family; his son in law is an OB-GYN also. He assisted to Dr. Ring, a former Representative, when her last child was born.

Senator McGee stated he knows Dr. Roberage very well. He is one of the most respected people in the Caldwell community. Senator McGee said they attend church together and they also serve on the Caldwell Rotary Club. He has done a good job on the State Board of Health and Welfare. Senator McGee said he encourages the Committee's aye vote.

Senator Broadsword said the last time she saw him was at a meeting with Health and Welfare where they were planning how to address the audit. She asked for an update on the November meeting. **Dr. Roberage** reported they covered the deficits presented and showed a lot of improvement and it was a good meeting. The audit comes up at the end of this month.

Senator Kelly stated that the form doesn't identify a political party and that is something we always want in the record. **Dr. Roberage** stated he is an Independent, he doesn't declare a political party. **Senator Kelly** asked that the form be changed to declare him as Independent. **Senator McGee** stated that he is not aware of an Independent political party. We have Republicans and Democrats, I think what Dr. Roberage is saying is that he doesn't find himself under the heading of a political party, not that he is a member of the Independent party. **Chairman Lodge** said she will meet with Karen McGee in the Governor's office and talk about what to do about this. **Senator Kelly** asked that Chairman Lodge follow up with her on identifying a political party for Dr. Roberage.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

**GUBERNATORIAL
APPOINTMENT**

Quane Kenyon of Boise was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

Senator Darrington commended Mr. Kenyon on the Department's annual report - it was very well done and it is useful to put the history and a short synopsis on the responsibilities and composition of the Board.

Senator Broadsword was pleased to hear his synopsis of HB 832 and recalled that about a year ago Mr. Kenyon was tired of Health and Welfare and ready to leave, but after that infusion of a new outlook he was willing to stay. She is pleased to see that he is willing to stay another four years. She thanked him for his dedication.

Chairman Lodge thanked him for taking time to serve on the Inter Agency Committee because this really is a step in the right direction to help solve a terrible problem in this state.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

**GUBERNATORIAL
APPOINTMENT**

Darrell Kerby of Bonners Ferry was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

Senator Broadsword stated that Mr. Kerby has been a breath of fresh air to work with. He has undertaken many things in his career, not the least of which is to get cooperation with the Kootenai Tribe in partnering to solve some severe problems they were facing. The community has expanded and grown under his leadership in Bonners Ferry. The Board will be well suited for him and Senator Broadsword appreciates his willingness to serve the citizens of Idaho.

Senator Hammond said Mr. Kerby is a good man, a pleasure to work with, and he will do a good job as a member of the Board of Health and Welfare. He thanked Mr. Kerby for his willingness to do so.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

**GUBERNATORIAL
APPOINTMENT**

Stephen Weeg of Pocatello was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

Senator Darrington shared that Mr. Weeg knows the Department from the inside for many years, and now sees it from the outside. There have been many changes, service is delivered differently now because of Welfare Reform. He asked Mr. Weeg whether progress has been made and do you have a vision of a direction the Legislature ought to go in the future in the delivery of services and efficiencies that may be implemented? **Mr. Weeg** stated that he has a couple of passions - one is

he would like to treat the beginning of the issue, not the end of the issue. He believes the first six years of a child's life are absolutely critical in terms of what will happen for that child long term. Unfortunately funding streams don't allow us to look at prevention until a child has been abused and that is tragic. He believes every child needs adequate health care. Sick kids do not learn well. Another passion is people who, through no fault of their own, struggle through life, whether due to mental illness, severe developmental disability or as they age in body and mind. He believes the measure of a society is how we take care of all of us, not just those of us who are successful. **Senator Darrington** replied that he understands that Mr. Weeg's vision is progression slowly, over time, from the tail end to the front end. **Mr. Weeg** stated the more we can look at that the better.

Senator Broadsword said she finds it interesting that the Board now has two people on it who are very closely tied to companies that deal with the low income and uninsured population. She thinks that will give the Board a very unique look at what Health and Welfare does and how we can better serve those people. Last year the Legislature passed a bill that laid in place the ground work for a grant program to fund the health centers. There is talk that the Legislature may fund that this year, do you have suggestions about how those grant funds can be put to use in clinics like yours? **Mr. Weeg** answered that there are four critical areas: 1. an electronic medical record, 2. additional space, 3. building improvements, and 4. digital equipment. **Senator Broadsword** stated she is in favor of the idea of preventive medicine and that is the direction we must go.

Chairman Lodge thanked everyone for coming and said that the Committee will vote on the Gubernatorial Appointments on Monday. She turned the meeting over to **Vice Chairman Broadsword** to begin presentation of the Rules.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

RULES:

22-0105-0601

Relating to rules governing the licensure of physical therapists and physical therapy assistants (Chapter Repeal).

Nancy Kerr, Executive Director of the Board of Medicine, reported that HB 619 transferred physical therapists to the Bureau of Occupational Licensing in 2006. This repeal will allow the new licensing agency rulemaking authority for physical therapists.

MOTION

Senator Hammond moved to adopt 22-0105-0601. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

22-0106-0601

Relating to rules for Emergency Medical Services (EMS) personnel (Chapter Repeal).

Nancy Kerr, reported that SB 1342 transferred Emergency Medical Services (EMS) to the newly formed EMS Physician Commission of the Department of Health and Welfare in 2006. This repeal will allow the new licensing agency rulemaking authority for EMS.

MOTION

Senator Hammond moved to adopt 22-0106-0601. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

22-0101-0701

Relating to the Board of Medicine for the licensure to practice medicine and surgery and osteopathic medicine and surgery in Idaho (Fee Rule).

Nancy Kerr explained this rule more clearly defines terms and national organizations associated with physician licensing. It establishes the requirement for lawful presence in the United States and reaffirms English language requirements; corrects language related to international graduates from “foreign” to “international”; establishes international school requirements for curriculum and provides a more flexible requirement for international schools to establish a graduate history versus the previous requirement; and changes and broadens the fee schedule consistent with other rules of the Board. There is no fee increase because of this rule. No comments regarding the proposed rules were received during the comment period.

Senator Kelly asked if this rule makes it easier or harder for international graduates to come? **Ms. Kerr** said it makes it easier. **Senator Kelly** what prompted this rule change? **Ms. Kerr** replied there was a constituent that came before the sub-committee and asked for these changes. **Senator Kelly** said she remembers a slide show of scary things about international schools and that is what stuck in her mind. **Ms. Kerr** said the language makes it more flexible, however, this is not an open door policy. This rule will protect us from graduates from the Internet schools and out houses that were used as classrooms.

Vice Chairman Broadsword asked if it is correct that this rule raises the ceiling for the fees, but doesn't raise the fees? Is the Board financially sound and doesn't need to raise the fees at this time? **Ms. Kerr** replied that is correct. She believes fee raises will come in the near future.

Senator Hammond asked if they use the World Health Organization directly as a screening device for the legitimacy of the International Medical School? **Ms. Kerr** replied not for legitimacy, but the graduation date.

MOTION

Senator Kelly moved to adopt 22-0101-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

22-0102-0701

Relating to rules of the Board of Medicine for the registration of externs, interns, and medical residents (Fee Rule).

Nancy Kerr explained that this fee rule provides general housekeeping changes for conformity; clarifies and defines the accrediting agencies for post graduate physician training; establishes the requirement for lawful presence in the United States and reaffirms English language and translation requirements; clarifies acceptable schools of medicine, supervision and liability requirements for interns, externs and residents; and changes the fee schedule consistent with other rules of the Board. There is no increase in fees because of this rule. These rules were published in the Idaho Administrative Bulletin. During the comment period one supporting comment regarding the proposed rules was received. **Vice Chairman Broadsword** asked about a delay with finger printings - possibly redone as many as three times - is this still a problem? **Ms. Kerr** replied that this is common with surgeons because they scrub so often their fingerprints are harder to get. **Senator Hammond** asked what is an extern? **Ms. Kerr** replied that an extern is someone still enrolled in medical school doing training outside of the program - for instance, observing a physician during a break in school.

MOTION

Senator Hammond moved to adopt 22-0102-0701. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

22-0111-0701

Relating to rules for licensure of respirator therapists and permitting of polysomnographers in Idaho (Fee Rule).

Nancy Kerr explained that this fee rule provides general housekeeping updates, requires lawful presence in the United States, and requires English language proficiency; broadens the fee schedule language to conform to other rules of the Board of Medicine and increase fees for lapsed or cancelled licenses to reinstate licensure; and establishes the requirement for current certification by the national specialty board for the profession. Previously it allowed a lifetime certification, but now has gone to a periodic renewal in the concept of demonstrated continued competency.

Vice Chairman Broadsword asked if Idaho residency is required? **Ms. Kerr** replied that it is not because some of the physician population (several hundred) practice in Chicago and Australia, they are the digital imagery professionals.

MOTION

Senator Coiner moved to approve 22-0111-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8].

16-0314-0801

Relating to rules & minimum standards for hospitals in Idaho (Temporary).

Debby Ransom, Bureau Chief of the Facility Standards Bureau in the Medicaid Division, explained that this rule addresses free standing

emergency departments - emergency rooms that are not co-located with a hospital campus. The rule outlines minimum design and construction standards, standards of care and services, and provides guidelines to ensure these facilities will be regulated to protect the health, safety and welfare of the public. The rules were negotiated with the industry including the Idaho Hospital Association, St. Alphonsus, St. Lukes, Mercy Medical Center, Emergency Medical Services and laboratory staff in the Department.

Vice Chairman Broadsword asked if a free standing emergency department is separate from an urgent care facility? **Ms. Ransom** answered they are different. The free standing emergency rooms are open 24 hours per day, 7 days per week and is staffed by Board certified or emergency certified or eligible doctors and RN's with advanced life support and pediatric life support. She introduced **Ted Ryan**, Director of Emergency Services at St. Alphonsus, who thanked the Committee and offered to answer any questions they may have.

MOTION

Senator Hammond moved to adopt 16-0314-0801. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 9].

41-0401-0701

Relating to Public Health District 4 - costs and charges (Pending Fee Rule).

Russell Duke, Director of Central District Health Department, explained that this rule is to repeal IDAPA 41.04.01 which was made effective in 1993, and applied only to Public Health District 4. The rule specifies fees for services delivered by the Agency, except for those specified elsewhere in Idaho Code. In 1994 a set of rules were adopted that apply to fee setting for all seven Public Health Districts. At that point, the 1993 rules became obsolete. This rule repeals the 1993 rules for housekeeping purposes.

Vice Chairman Broadsword asked if this will not make any new fee making authority but will simply take out old language from 1993 which has been replace with new language? **Mr. Duke** replied that is correct.

MOTION

Senator McGee moved to accept 41-0401-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 10].

58-0101-0701

Relating to rules for the control of air pollution in Idaho.

Martin Bauer, Air Administrator for the Department of Environmental Quality, explained that this rule ensures that the rules for the control of air pollution remain consistent with Federal regulations. It incorporates Federal rules into our State rules and also specifically deletes references to the clean unit and pollution control project provisions which are no longer necessary because the Environmental Protection Agency (EPA)

recently adopted a final rule eliminating these projects. This rule was not a negotiated rule but did include a public comment period and a public hearing. Comments were received and DEQ prepared a response to comments.

Vice Chairman Broadsword asked if it is correct that there are no objections? **Mr. Bauer** replied that is correct.

MOTION

Senator Coiner moved to adopt 58-0101-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 11].

58-0105-0701

Relating to rules and standards for hazardous waste.

Orville Green, Waste Management and Remediation Division Administrator of the Department of Environmental Quality (DEQ), explained that this rule describes by reference of Federal Hazardous Waste Regulations, promulgated from July 1, 2006 through June 30, 2007. It is a routine, annual procedure that DEQ performs to satisfy consistency and stringency requirements of the Idaho Hazardous Waste Management Act. There will be no increased costs for the community. No public hearing was held and no written comments were received from the public.

MOTION

Senator Kelly moved to accept 58-0105-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 12].

58-0108-0701

Relating to Idaho rules for public drinking water systems.

Barry Burnell, Water Quality Division Administrator with the Idaho Department of Environmental Quality, explained that these rules are to adopt two rules adopted by the Environmental Protection Agency (EPA). The rules are: the Stage 2 Disinfection Byproducts Rule and the Long Term 2 Enhanced Surface Water Treatment Rule. A negotiating session was held in April 2007 and no one attended and no comments from the public were received during the public comment period.

Vice Chairman Broadsword asked if this will make it more difficult for small water systems to comply? **Mr. Burnell** answered these rules will require water systems to collect additional samples of the source water or monitor within the distribution system for the disinfection byproducts. So there will be additional monitoring costs associated for all water systems.

Vice Chairman Broadsword asked if there is an estimate of those costs? **Mr. Burnell** answered EPA estimated that implementation of the Long Term 2 rule would cost \$1.67 to \$2.59 per household, per year. The Disinfection Byproducts rule EPA's estimated cost will range from \$0.13 to \$4.58 per household, per year. **Vice Chairman Broadsword** stated that is quite a range. **Mr. Burnell** stated that it depends on the size of the system. Smaller systems will have fewer users, but are still required to do

the monitoring, so the cost will be born by fewer individuals so the cost will be higher. Larger systems can spread the cost among more users so the cost is smaller. **Vice Chairman Broadsword** asked if there was push back from system owners? **Mr. Burnell** said “no”, these are adoption by reference rules. In order for the State to maintain primacy we have to comply or EPA will become involved in administering the rules for our public water systems. We feel it is better for DEQ to do that. Where there was flexibility in these rules, DEQ opted to invoke that flexibility as best they could to provide credits to systems where they’re doing water shed treatment technologies to provide credits to help those systems to be classified in a manner that reduces the regulatory burden on them.

Senator Darrington asked Lynn Tominaga, a representative of Idaho Rural Water Association, who represents systems that are under 10,000 in population, if the small drinking water associations in favor of this rule and have no problem with it? **Lynn Tominaga** answered that they are more concerned with whether the State will keep primacy because it is better to work with DEQ.

MOTION

Senator McGee moved to adopt 58-0108-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 13].

Senator Kelly asked Mr. Burnell for an update of the septic tank spacing issue? **Mr. Burnell** answered that the Council of District Directors asked their Director, Tony Hardesty, to consider undertaking a negotiated rulemaking for the subsurface sewage rules. He answered that they would form a group of individuals from the Health Districts and DEQ to investigate the waste water flows from individual dwellings pending concurrence from the seven district health departments that there was a need for change in the rules. The agency asked that they contact their county representatives and have everyone onboard before going down that path. They have had their first teleconference with the health districts last week to begin looking at the data. **Senator Kelly** said she understands the desire to have buy-in, but is public health being protected by waiting for buy-in? **Mr. Burnell** said that he believes public health is being protected. There can be improvements in designs of systems for certain size structures that would improve the life span of a particular septic tank and drain field structure. These are the issues at play here between water conservation efforts and size of structure, it goes in both directions. Part of the request to the health districts is that the seven districts be on the same sheet of music. In previous rulemakings the districts were on different sheets and that was problematic. **Vice Chairman Broadsword** stated that she thinks its very important to make sure we are instituting a rule that is going to treat all our ground water the same. Via the septic tank rule you’re actually treating ground water because if you don’t have the correct rule in place it could be in danger. She appreciates that DEQ will be looking at the big picture rather than microcosms. **Senator Hammond** stated that some of the issue of long term sustain ability of the systems has to do with design, but it also has to do with care. One thing we haven’t done when issuing permits the

individuals have gone on their way and they are not well educated on how they need to care for these. These systems are in essence a mini waste water treatment plant. People need to be educated about care of the systems so they will be able to sustain themselves long term and so we don't plug up the drain field by not pumping the tank out regularly.

Senator Kelly asked so is something being done about that? That seems like a public responsibility to follow up on that. **Vice Chairman**

Broadsword replied that she had suggested to Panhandle Health that a sheet be developed to be handed out State wide, so that whenever a property changes hands or a new person applies for a septic tank permit, they are given a sheet of dos and don'ts in maintaining the system.

Panhandle Health assured her they would follow up on that and she will be checking up on it.

MOTION

Senator Hammond moved for approval of the minutes for January 14, 2008. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

ADJOURNMENT

Chairman Lodge commended the committee on the progress made on the rules. She then adjourned the meeting at 4:25 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 21, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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 and began the confirmation process for the Gubernatorial Appointments.

GUBERNATORIAL APPOINTMENT **Richard T. Roberge** of Caldwell was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

MOTION **Senator McGee** moved to send the appointment of Richard Roberge to the floor of the Senate with a Do Pass recommendation. The motion was seconded by **Senator Hammond**. **Senator Kelly** noted that the Board Member Data Sheet does not have the political affiliation on it and, while she doesn't want to give the impression she is questioning the qualifications or dedication of Dr. Roberge, she feels it is important to have this form filled out properly. **Chairman Lodge** stated that she talked to the Governor's office and they said they will be more specific on what they put on that line in the future. Dr. Roberge told her that he left it blank when he filled it out because he isn't affiliated with any political party. **Senator Darrington** said that Dr. Roberge told that to the Committee also, so the appropriate way to handle that is that our Committee minutes reflect that. **Senator Kelly** stated that she was going to take the form with her to investigate options at this point for getting it accurately filled out. **Chairman Lodge** asked **Senator Kelly** how she would suggest, if someone is an Independent, not politically affiliated, they fill this out? **Senator Kelly** stated she believes historically they put Independent on the form. **Senator McGee** said it might be more appropriate if they put "None" instead of "Independent". **Senator Werk** stated that statute requires that the Board have some political affiliation balance. So the fact that the form is not complete doesn't comply with the statute. **Vice Chairman Broadsword** added that this isn't the first one this has been omitted; she remembers several others from other Governors. **Senator Kelly** said that based on this discussion, she will vote against the motion because it is a fatal flaw in the application. The fact is, the statute only allows four members of one party to sit on the Board. We know there are four members from one party already on the Board, and with this blank we don't have affirmation. **Senator McGee** stated that the

affirmation that we have is from the minutes as **Senator Darrington** pointed out. The fact is it is now reflected in the minutes of this Committee that Dr. Roberge is indeed an Independent. So we know clearly what his political affiliation is.

MOTION

The Committee voted on the motions by **Senator McGee**, seconded by **Senator Hammond**. The motion carried by **voice vote**. **Senator Werk** and **Senator Kelly** voted nay. **Chairman Lodge** asked **Senator McGee** to take sponsorship and he agreed.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

GUBERNATORIAL APPOINTMENT

Quane Kenyon of Boise was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

MOTION

Senator Darrington moved to send the confirmation of Quane Kenyon to the Board of Health and Welfare with do pass recommendation. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**. **Chairman Lodge** will sponsor Mr. Kenyon.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

GUBERNATORIAL APPOINTMENT

Darrell Kerby of Bonners Ferry was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

MOTION

Vice Chairman Broadsword moved to send the nomination of Darrell Kerby to the State Board of Health and Welfare with a do pass recommendation. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**. **Chairman Lodge** will ask **Senator Keough** to sponsor Mr. Kerby.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

GUBERNATORIAL APPOINTMENT

Stephen Weeg of Pocatello was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2007 and expiring January 7, 2011.

MOTION

Senator Darrington moved to send the nomination of Stephen Weeg to the State Board of Health and Welfare with a do pass recommendation. The motion was seconded by **Senator Kelly**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

Chairman Lodge turned the meeting over to **Vice Chairman**

Broadsword to begin presentation of the Rules.

RULES:

15-0201-0701 Relating to Federal laws and regulations (Chapter Repeal).

Nanna Hanchett, Rehabilitation Chief for the Idaho Commission for the Blind and Visually Impaired, explained that this rule is to repeal a chapter which contains outdated laws and codes of Federal regulations. **Senator Bair** asked for clarification on what exactly is being repealed. **Ms. Hanchett** explained that they are outdated Federal laws and regulations that no longer apply. **Senator Bair** asked for examples. **Ms. Hanchett** said one Act was from 1979 and was amended in 1998 so it no longer reflects current rules.

MOTION Senator Hammond moved to adopt 15-0201-0701. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

15-0202-0701 Relating to Vocational Rehabilitation Services (Pending Rule).

Nanna Hanchett explained that this rule brings them in line with current Federally mandated laws and regulations. They address who may apply for Vocational Rehabilitation Services, applicant requirements, eligibility criteria, criteria completion and implementation of an individual plan for employment, and the Commission's payment policy. **Vice Chairman Broadsword** asked if a good share of changes in this rule are changing initials into what they stand for? **Ms. Hanchett** answered that they also have a definition section. **Vice Chairman Broadsword** asked if they are adding any new definitions? **Ms. Hanchett** replied that they are not.

MOTION **Chairman Lodge** moved to adopt 15-0202-0701. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

15-0203-0701 Relating to rules governing the Independent Living Program (Pending Rule).

Nanna Hanchett stated that these rules are Federally mandated and address who may apply for Independent Living services, applicant requirements, eligibility criteria for services, and criteria for completion and implementation of a plan or waiver of a plan for services. The Commission reserves the right to expend no more than \$500 per case to allow the flexibility to effectively serve all eligible individuals in the Program. **Vice Chairman Broadsword** asked if Ms. Hanchett would classify this docket as a housekeeping rule? **Ms. Hanchett** replied that she would.

MOTION **Senator Hammond** moved to adopt 15-0203-0701. The motion was

seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

15-0204-0701

Relating to rules governing the Prevention of Blindness and Sight Restoration Program (Pending Rule).

Nanna Hanchett explained that these rules are housekeeping items and address the eligibility criteria and provision of payment for services based on financial need and availability of funds in a fiscal year for the Program. Payment for services is capped at \$5000 per lifetime. **Vice Chairman Broadsword** asked if anyone contacted the Commission with comments? **Ms. Hanchett** replied there were no comments. **Senator Werk** asked if **Ms. Hanchett** could provide information about the kinds of services and their costs regarding the \$5000 limit? Is \$5000 reasonable for a lifetime of this kind of intervention? **Ms. Hanchett** replied that the services are medical services. The individuals who run this program do an extraordinary job of applying comparable benefits to coordinate with Program services to help get all the services an individual needs for prevention. She stated she is new to the Program, but has not heard of anyone not receiving services. They do have the ability to go above the \$5000 cap with approval. **Senator Werk** asked if a person eligible for these services would also be eligible for other services through Medicaid or Social Security Disability Income, is that true that there is a wrap around of services? **Ms. Hanchett** stated that often times they either have insurance or Medicaid but sometimes financial aid, specifically, is not able to cover these services. The Program has to use comparable benefits first, so if they have Medicaid, Medicare or private insurance those benefits are used first prior to the Commission. **Senator Werk** asked what kinds of diseases are we talking about? **Ms. Hanchett** replied macular degeneration and glaucoma are a couple of examples where they can do certain surgical procedures to stop bleeding in the eye, or to remove a glaucoma. This often allows an individual to maintain their sight and productive life.

MOTION

Senator McGee moved to adopt 15-0204-0701. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**. **Senator Werk** voted nay.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

27-0101-0601

Relating to rules of the Idaho State Board of Pharmacy (Temporary Rule).

Mark Johnston, Executive Director of the Board of Pharmacy, explained that he is asking for the continuation of the temporary status of this rule on the Remote Pharmacy Dispensing Pilot Project. This project is managed from Park Vu Pharmacy in Weiser; the remote pharmacy is located in Council, staffed by a technician. A pharmacist is available via a video and audio feed from Weiser. They need to work out a few details before asking for permanent status and allowing other locations within the State.

Vice Chairman Broadsword stated that she saw this program in action and was impressed with its security and uniqueness. **Mr. Johnston** described how the dispensing machine works. **Vice Chairman Broadsword** asked if patients have been accepting of this dispensing process? **Mr. Johnston** said it is about 60 miles to the nearest pharmacy for these folks, so the community in Council has been overwhelmingly enthusiastic about the remote pharmacy there. **Senator Werk** stated that this rule has been in place for a year and there are no changes? **Vice Chairman Broadsword** said that was her understanding.

MOTION

Senator McGee moved to adopt 27-0101-0601. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

27-0101-0701

Relating to rules of the Idaho State Board of Pharmacy.

Mr. Johnston stated that this rule pertains to obtaining positive identification for controlled substance prescriptions. The Board of Pharmacy worked with the Idaho State Pharmacy Association, the National Association of Chain Drug Stores and the Idaho Retail Association to form a rule that everyone agrees upon. Details are: All prescriptions paid for in full or in part by an insurer are exempt from this rule; if the patient is known to a member of the dispensing pharmacy staff, the pharmacy must keep a record of this, the pharmacy staff member name and the name of the person picking up the prescription. If the patient is unknown to the pharmacy, positive identification must be obtained and a record must be kept.

MOTION

Senator Coiner moved to adopt 27-0101-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

27-0101-0702

Relating to rules of the Idaho State Board of Pharmacy (Pending Rule).

Mark Johnston stated that this rule change adds pharmacies that service Long Term Care facilities to the Prescription Monitoring Program. This Program currently monitors controlled substance prescriptions filled by community and mail service pharmacies. Although Long Term Care patients are not thought of as risky patients to be passing invalid prescriptions, the Board of Pharmacy has learned that Long Term Care facilities commonly fill prescriptions for their own employees, and thus should be monitored for controlled substance prescriptions filled.

MOTION

Senator Hammond moved to adopt 27-0101-0702. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

27-0101-0703

Relating to rules of the Idaho State Board of Pharmacy (Pending Rule).

Mark Johnston explained that the 2007 Idaho Wholesale Drug Distribution Act was passed last year by the Legislature to stop counterfeit prescription items from entering the normal distribution channel. This Act mandated the formation of these rules, which were formed through negotiated rulemaking with entities such as the National Association of Chain Drug Stores. This rule requires wholesalers who distribute prescription medications to apply for licensure as opposed to registration. Pedigrees (documents of authenticity) are also required for prescription items that leave the normal distribution channel.

Senator Bair asked what is the difference between licensing and registration? **Mr. Johnston** answered that registration was a one-page application; licensure is up to an 18-page application. Licensure includes a seven year history of the applicant. **Vice Chairman Broadsword** asked for the reason for this change? **Mr. Johnston** replied that there was a case in Florida where Lipitor made in India made it into our supply chain. India doesn't recognize patent rights, so they make counterfeit products. This rule is to stop counterfeit products from making it into our normal distribution channel again.

Senator Kelly noted that the fiscal impact stated that it didn't exceed \$10,000. **Mr. Johnston** reported that those were for legal fees and man power involved. He offered to defer to legal counsel from the Attorney General's Office, Mr. Michael McPeek, who was instrumental in writing this rule. **Senator Kelly** declined to hear from him. **Vice Chairman Broadsword** asked if the fees charged for licensure cover most of the cost for processing? **Mr. Johnston** replied they do. The fees for licensure did not increase, but the fingerprint cards cost the State about \$30 to process. **Senator Werk** noted that Mr. Johnston said the fees for licensure and for registration are remaining the same even though the process for licensure is much more expensive. There seems to be a disconnect there. Are there plans to alter the fee structure? **Mr. Johnston** answered that there has been talk of increasing the fees by \$30 in the next legislative session.

Senator Kelly asked about the exemption to the licensure requirement. **Mr. Johnston** said the exemption is for manufacturers who distribute their own manufactured goods and are the starting point of this process, so the concept is that you can't leave the normal distribution channel from the starting point. **Vice Chairman Broadsword** added that it was to target the middle men that were bringing in the counterfeits and sliding them into our distribution chain.

MOTION

Senator Bair moved to adopt 27-0101-0703. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

27-0101-0704

Relating to rules of the Idaho State Board of Pharmacy (Pending Rule).

Mark Johnston stated that this rule is to approve a pilot program that will allow an intensely trained pharmacy technician to check prescriptions

filled by another pharmacy technician without a pharmacist's final check. This would only be allowed in a hospital setting. He introduced Larry Munkelt, the Director of Pharmacy Services at St. Alphonsus in Boise, who will lead this pilot program, if approved, to explain the program in more detail.

Mr. Munkelt said this rule has a very limited scope - only one or two technicians per hospital and only in hospitals. The purpose of this rule is to improve patient care by leaving pharmacists on the floors doing clinical studies and programs that they have been educated for and prefer doing. The process of the check involves patient profiles, which are a list of all the medications a patient is on. The first technician pulls all the medications on the list and puts them on the patient profile, then the patient profile with the pulled medications is checked by a pharmacist. This rule would allow another technician do this check. Studies have shown that technicians do this checking statistically better than pharmacists. For this pilot program the standard has been set at 99.82% accuracy - not more than 3 mistakes in 1500 doses checked. There is a training and testing process for technicians to educate them so they can attain this level of accuracy. They will be monitored throughout this project to assure they are maintaining this accuracy level. They would like to implement this for one year, then come back to the Committee to report.

Senator Kelly asked what acute care hospital means? **Mr. Munkelt** answered it is versus long term care. **Senator Kelly** asked does this include the surgical centers, not just St. Alphonsus and St. Lukes? **Mr. Munkelt** answered that the intent is to start the pilot project at St. Alphonsus. If this goes into a permanent rule, then it will be rolled out to all the hospitals - like Mercy, and smaller hospitals. At that point, the Board has requested that each facility that would like to adopt this rule will bring their case before the Board and it will be approved on a case by case basis. **Senator Kelly** asked for clarification. This is a pilot program that will be at one already determined acute care hospital, and that is all the rules allow? **Mr. Munkelt** explained that right now they are asking for one facility for the pilot project. After a year of demonstrated ability by technicians to qualify for this level of accuracy, they will ask for a permanent rule and then other facilities will be able to go before the Board and petition for this service.

Vice Chairman Broadsword asked if the reason for having a technician check another technician is to free up the pharmacists' time so he can fill more prescriptions to save man hours? **Mr. Munkelt** answered that is true. And it is a better patient care environment and makes the pharmacy more efficient. It gives the technicians a higher level to aspire to, so it is a career-enhancing tool for technicians. He has used it in other states and it has been very successful.

Senator Kelly said that the language of the rule doesn't limit it to one hospital. It limits the program length to two years, but doesn't say one hospital and it has plurals throughout. **Mr. Johnston** replied that the rule gives the authority to the Executive Director to approve those programs, so that would be up to him. It is his intent to have one pilot program for the first year.

Senator Werk asked about cost to the State. Would the State simply have administrative burden for monitoring what is going on? **Vice Chairman Broadsword** stated that the Pharmacy Board operates out of

dedicated funds generated by pharmacists. **Senator Werk** asked if the burden of cost to the Board for this pilot program is for administrative duties to keep track of what is going on? **Mr. Johnston** replied that it is and that those costs are minimal. Moving forward it would be Mr. Munkelt reporting to Mr. Johnston, a minimal amount of time.

MOTION

Senator Coiner moved to adopt 27-0101-0704. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

27-0101-0705

Relating to rules of the Idaho State Board of Pharmacy (Pending Rule).

Mark Johnston explained that this rule establishes the registration process of users and conditions for access to and use of the Prescription Monitoring Program (PMP). The PMP is a result of a \$196,000 Federal grant and will allow for 24 hour, 7 day a week access for authorized users.

Vice Chairman Broadsword asked who will use this system? **Mr. Johnston** answered that it is for practitioners, pharmacists, and law enforcement officials. **Vice Chairman Broadsword** asked if the reason for this system is to keep people from pharmacy shopping? **Mr. Johnston** answered that, yes, that is correct. The biggest use seen is in emergency room and pain management clinics are in a habit of asking for this information ahead of time so that when a patient comes in they know if they have a doctor shopper or not. The emergency room doesn't have access to the information if it is after hours, but soon they will.

Vice Chairman Broadsword asked when this system will be up and running? **Mr. Johnston** reported that it is in test mode now and several users are identifying bugs that they are solving. They hope to have the system up and running by the end of January.

Senator Darrington asked whether one of the reasons for having rules allowing pharmacy technicians to operate is because the large hospital's pharmacies are open during off hours (24 hours per day, 7 days per week)? **Mr. Johnston** replied that current rules only prohibit a pharmacy technician from working inside a pharmacy while there is a pharmacist on the premises. If the pharmacist is out doing rounds and clinical activities the technician is allowed to work within the pharmacy, however no products without a final check of the pharmacist is allowed to leave. If there isn't a pharmacist on the premises technicians are not allowed access to the pharmacy. However, a Registered Nurse who is documented with the training to enter the pharmacy to obtain emergency doses is allowed.

Senator Werk noted that twice in the rule you talk about information access for PMP shall not be disclosed to any unauthorized person. Who is an authorized person and who isn't? **Mr. Johnston** answered that it is defined in the statute.

MOTION

Chairman Lodge moved to adopt 27-0101-0705. The motion was

seconded by **Senator Werk**.

Senator Werk thanked the Board of Pharmacy and said it is nice to see this come to fruition. They have been finding that with medical database information much is not covered by current database protection statutes that require notification if your security is breached with an online database. He is concerned about that because a lot of our healthcare information is going online, so we may need to do some statute update to catch up with that fact. **Mr. Johnston** stated that there is an application process and the rules only allow for the user to use their ID and password and don't allow for the user to pass that information along to anyone else. The screening process of the users will identify if they are licensed practitioners, licensed pharmacists, or police officers. **Senator Werk** stated that it may be better to have a sidebar discussion about where they are housing their data and things like that. It is a different issue than we're dealing with here.

The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

Vice Chairman Broadword turned the meeting back to **Chairman Lodge** who complimented Mr. Johnston on doing an excellent job.

MOTION

Senator McGee moved to approve the January 15, 2008 minutes. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

The Senators had a discussion on possible future speakers to the Committee.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:03 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 22, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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 and turned the meeting over to **Vice Chairman Broadsword** to begin presentation of the rules.

RULES:

15-0102-0701 Relating to rules governing area agency Adult Protection Programs (Pending Rule).

Sarah Scott, Program Operations Manager/Adult Protection, Idaho Commission on Aging, explained that the Idaho Commission on Aging (ICOA) is responsible for investigating abuse, neglect and exploitation of "vulnerable adults" (individuals with mental or physical impairments that affect their ability to make or implement decisions). The ICOA contracts with Idaho's six Area Agencies on Aging to provide Adult Protection Services. The proposed rule expands the definition of an Adult Protection Worker to include other qualified individuals with relevant education and experience to carry out the required duties. These individuals will have a Bachelor of Science (BS) or Bachelor of Arts (BA) degree and two years experience working with vulnerable adult population, or individuals with an Associate of Arts (AA) or Associate of Science (AS) degree and a law enforcement background. This rule does not change the requirement that an Adult Protection Supervisor be a licensed Social Worker. With more diverse teams, Adult Protection units will be better prepared to collaborate with law enforcement officers, prosecutors, physicians and others involved in investigations.

Senator Darrington asked about the use of BA, BS, AA, and AS in the wording of the rule without definitions of what those acronyms stand for. Are they defined in earlier rules? **Ms. Scott** replied that she doesn't know if they are defined in earlier rules. **Senator Darrington** asked about the requirement of two years experience. How can a person gain that experience? **Ms. Scott** answered that the two year's experience is in working with a vulnerable population, not necessarily in Adult Protection. **Senator Darrington** asked if the overall rules are structured in such a way that the workers need not be over zealous, and are they able to sort out that which is true elder abuse from that which is a lifetime pattern or habit which becomes exaggerated when they become elderly and

incapacitated and do somewhat strange things? **Ms. Scott** said each case requires its own investigation and the investigators work in teams which helps them determine how to handle the case.

MOTION

Senator Hammond moved to adopt 15-0102-0701 with the comment that this change in rule will enhance the ability to investigate these kinds of cases. The motion was seconded by **Senator Kelly**. **Vice Chairman Broadsword** asked Ms. Scott to investigate whether AA and AS is defined elsewhere in the rules and if not, create a temporary rule for next year to address that. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

21-0101-0701

Relating to rules of the Idaho Board of Nursing (Pending Rule).

Sandra Evans, Executive Director of Idaho Board of Nursing, explained that this rule change amends language related to grounds for discipline related to habitual use of drugs and alcohol and implements provisions of legislation passed in 2007 (HB157) authorizing regulation of certified medication assistants by the Board of Nursing beginning July 1, 2008. This rule was published in the Administrative Rules Bulletin and was made available on the Board of Nursing website and, on request, through the office of the Board. In addition, the Board presented eight forums around the State to present the proposed rules to stakeholders and to receive comments of the proposed rules. A number of comments were received and the Board made several non-substantive changes to the rules prior to their publication as pending.

Senator Darrington asked if the fees related to medication assistants are based on the approximate cost of the delivery of service? **Ms. Evans** replied that they are, but explained they are probably not commensurate to the amount of work involved in the office of the Board, but the expense will be offset by the fees assessed for Licensed Practical Nurses (LPNs) and Registered Nurses (RNs). LPNs and RNs make substantially more wages than these workers will be making so their fees have been reduced to compensate for that.

Senator Werk asked if in the report for medication errors required by medication assistants to Administration, is there a requirement to report these to the State? **Ms. Evans** stated that reporting to the State is not mandated by law but it is certainly a professional responsibility on the part of licensees to do what is necessary to protect patients.

MOTION

Senator Hammond moved to adopt 21-0101-0701. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

23-0101-0702

Relating to rules of the Idaho Board of Nursing (Pending Rule).

Ms. Evans explained that this rule corrects a procedural dilemma created in existing rules. This rule provides a process for nurses who violate

monitoring conditions to continue in the Board's non-public alternative to discipline program while they are in treatment and beginning recovery for chemical addiction.

Senator Hammond asked about circumstances in which a nurse's license has been suspended for disciplinary purposes and before suspension time has occurred, she seeks to reinstate her license. Why would they do that? **Ms. Evans** said the Board offers a unique opportunity for nurses who are willing to admit to problems related to either mental illness and/or drug chemical use and abuse. The opportunity afforded is that their license is not suspended by the Board. They are required to admit to their impairment, to agree to enter treatment, and to be monitored by the Board. This is an alternative to a disciplinary program - an option for nurses to avoid disciplinary action. They are required to voluntarily surrender their license to the Board. This removes them from practice until the Board feels they are safe to return. Their return to practice is accomplished through the issuance of a limited restricted license.

The conditions on that license require day to day monitoring of their practice and progress in recovery and includes such things as random drug screens, attendance at meetings, sessions with counselors, work site monitors and a variety of things that might be imposed. The limited license under the proposed rule can be summarily withdrawn if the nurse violates any of those restrictions and then is reissued when the Board gets them back on track. The Board doesn't let them recycle too many times. At some point their continued frequent relapsing probably will result in discipline of their license, which is a very streamlined process because the nurse has now admitted to the violation of the law of habitual use or mental impairment. **Senator Hammond** asked how many nurses are put in this position each year? **Ms. Evans** answered that the program has been in place since 1985. Since then they have monitored about 350 nurses. Current enrollment in the program is 80 nurses, however, they are monitored for a period of up to five years, so some of them are just beginning in their process, some are ready to graduate. New enrollment in any given year is probably 20 nurses at the most.

Senator Coiner asked once they are in the program and then have a re-occurrence and are in the program again, is there a rule about the leniency for re-offenders? **Ms. Evans** replied that there is no reference in the rule for standards for leniency. However, the Board's decision on discipline of a license is based on the real or potential risk to the public. If a nurse has completed the five-year process of being monitored in recovery and then demonstrates continued behavior, the Board would take a serious look at the nurse's adherence to a recovery program for chronic disease. Many times they come back on a voluntary basis because at that point they are solid enough in their own knowledge of the disease and their recovery that they recognize when they're getting close to a relapse or have relapsed.

Senator Coiner asked if there is a difference between drug and alcohol abuse and re-occurring mental illness, noting that it seems like they are lumped together? **Ms. Evans** replied they are lumped together because nurses who suffer from either one or both of these illnesses are eligible for enrollment in the program. If there is not a dual diagnosis, they are

either chemical abusers or they have a mental illness, their treatment would be different and the progress would look different especially in terms of time frames. Many nurses will have dual diagnoses - both mental illness and a chemical addiction - and in that case the complexity of the disease and recovery process just increases.

MOTION

Senator Hammond moved to adopt 23-0101-0702. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

24-0301-0702

Relating to rules of the State Board of Chiropractic Physicians (Pending Rule).

Roger Hales, a private practice Lawyer contracting with the Bureau of Occupational Licenses to provide legal services, explained that this rule defines clinical nutritional methods due to Federal changes in the definition of legend drugs; clarifies that passing National Boards at the time of graduation from chiropractic college are a qualification; allows five years consecutive practice out of state without discipline as a way to receive endorsement; adds an 18 hour/year of Continuing Education (CE) in science requirement for licensure renewal; and allows distance learning to count toward no more than six CE hours/year. The Board has received no written comments in opposition to this rule. **Senator Werk** stated that the Board is reversing its position regarding Distance Learning and home study. At the same time they're talking about courses being sponsored by an approved school of Chiropractic or upon approval of the Board. There is a huge hole there. How will that hole get filled? There is no indication in the rule of what kind of qualifications are used or about how you would approve a course that is not from an accredited School of Chiropractic. **Mr. Hales** replied that the current approach is that if it has not been sponsored by an approved Chiropractic College it must be approved by the Board. There are many courses sponsored by an approved Chiropractic College. This just gives the Board the authority to approve others.

Senator Coiner asked if this scope of practice is an expansion or enlargement of the past scope? **Mr. Hales** answered it is not really an expansion. Under current law Chiropractors cannot administer legend drugs. However, it has been unclear what clinical nutritional methods includes. This is the first time the Board has tried to identify what a clinical nutritional method includes. **Senator Coiner** asked Mr. Hales to explain the makeup of the Board. **Mr. Hales** said they are all Chiropractic Physicians licensed in the State. There are no Pharmacists, but there is one public member. **Vice Chairman Broadsword** asked Mr. Hales to address who their formulary council is. **Mr. Hales** replied the Board is presenting an RS this year and for the first time it would create a formulary council which is made up of Chiropractors, a Medical Doctor, a Pharmacist, and a public member. This Council for the first time would define any legend drugs that would fall in this list that Chiropractors would be able to prescribe with appropriate education. It would also require certification for certain types of practice. **Senator Coiner** said he would

be more comfortable with this rule if there were someone from the Department of Pharmacy who could address what these are and what the expansion of this is before he would approve it.

Shannon Gaertner-Ewing, Chiropractic Physician, explained that the scope of practice rule does not expand anything that Chiropractic Physician's have been doing for years. It simply identifies those substances that they have been using in their nutrition practice. This came about when it came to the State Board's attention in October of 2006 that there were doctors that were perhaps practicing outside of the scope of practice by administering IV and injectable nutrients. Upon research it was discovered that in 1994 the FDA had redefined what a legend drug is. Now it included many of the substances Chiropractors had been using in their practices. So the Formulary Committee is identifying those substances that have always been part of their practice but will not expand their practice and will not allow them to do prescriptions. She met with Mark Johnston, Executive Director of the Board of Pharmacy, who took their rule language to his Board and to the Attorney General's office to get their opinion, and they were okay with it because they understood this was not an expansion.

Denise Rogers, Executive Director for the Idaho Association of Chiropractic Physicians, stated that her Board has met and they support this rule change.

Senator Werk asked a question of Ms. Gaertner-Ewing - in the scope you refer to IC 54-704 and Chiropractic practice and talking about injecting substances - how do the two fit together? **Mr. Hales** offered to answer this question and stated that there is an issue about whether a Chiropractor can inject or use an IV. However, clearly Chiropractic Physicians can provide vitamins to patients and this rule is simply trying to define what clinical nutritional methods are. The rule cannot expand the law, and the law states Chiropractic Physicians cannot prescribe any legend drug. So this rule will not override that, it is simply defining what clinical nutritional methods are.

Senator Kelly asked can they inject it? **Mr. Hales** replied that is a legal question which is being negotiated between the Board and other interested parties. **Vice Chairman Broadword** stated that this rule doesn't address that particular question - that is separate.

Senator Bair asked about page 455, Section B, I, II, III which were struck. Why weren't they also struck from Section A, Qualifications? **Mr. Hale** responded that Section A pertains to new applicants; Section B deals with applicants who have a license in another state.

MOTION

Senator Darrington moved to adopt 24-0301-0702. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

24-0501-0701

Relating to rules of the Board of Drinking Water and Wastewater Professionals (Pending Rule).

Mr. Hales explained that this rule adds a definition of direct supervision; clarifies that experience of one year is the equivalent of 1600 hours worked and that the same experience may not be used for more than one license; adds specific rules for upgrades from an operator in training to a Class I; adds approved CE courses; and changes operator in training permit to a license. **Vice Chairman Broadsword** asked if these are housekeeping rules? **Mr. Hales** answered that they are.

MOTION

Senator McGee moved to adopt 24-0501-0701. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

24-0901-0701

Relating to rules of the Board of Examiners of Nursing Home Administrators (Pending Rule).

Mr. Hales reported that this rule waives the requirement of Continuing Education (CE) for first year renewals and clarifies that trainees must work full time in any capacity in a licensed nursing home setting so long as they meet with the internship requirements. **Senator Werk** asked if this means a janitor working in a nursing home, for example, can become an administrator as long as they comply with the internship requirements? **Mr. Hales** replied that is possible. They would still have to meet all the requirements for an internship. This includes meeting with the supervisor at least 32 hours in a month and receive training in all the different areas required.

MOTION

Senator Bair moved to adopt 24-0901-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**. **Senator Werk** voted nay.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

24-1101-0701

Relating to the State Board of Podiatry (Pending Rule).

Mr. Hales explained that this rule states that all applicants must successfully pass all parts of the National Board examination given by the National Board of Podiatric Medical Examiners; removes language regarding old testing procedures; adds that original applications will be null and void if a license is not issued within two years of the application; and adds Continuing Education (CE) requirements stating it must be pertinent to the practice of podiatry and must be approved by the Council on Podiatric Medical Education or the Board. **Vice Chairman Broadsword** asked if these changes help a Podiatrist if they move to another state to practice there? **Mr. Hales** replied that it does.

MOTION

Senator Hammond moved to adopt 24-1101-0701. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

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

Attachment 7].

24-1301-0701 Relating to rules of the Physical Therapy Licensure Board (Pending Rule).

Mr. Hales explained that this rule identifies the examination to be the National Physical Therapy Examination administered by the Federation of State Boards of Physical Therapy and that the exam may include a jurisprudence examination adopted by the Board. It also adds requirements for licensure including submission of a complete application and successful passage of the examination with a score of at least 600 and a jurisprudence score of at least 75%.

MOTION **Senator Coiner** moved to adopt 24-1301-0701. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8].

24-1401-0701 Relating to rules of the State Board of Social Work Examiners (Pending Rule).

Mr. Hales said this rule clarifies that a supervisor can be from a licensed Marriage and Family Therapist or a counselor licensed by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. It also allows the Board to consider supervised experience obtained out of Idaho State under certain circumstances. It clarifies the level of examination that must be passed for Bachelor and Masters levels and clarifies that a social worker cannot discriminate. It adds that a social worker cannot practice while impaired by medication, alcohol or other chemicals or under a mental or physical condition that impairs the ability to practice safely.

MOTION **Senator Hammond** moved to adopt 24-1401-0701. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 9].

24-1501-0701 Relating to rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists (Fee Rule).

Mr. Hales explained that this rule removes reference to counseling programs accredited by the National Council for Accreditation of Teacher Education; clarifies references to college and universities and corrects references to accrediting bodies; clarifies that interns must register before commencing supervisor experience; creates fees for renewal of inactive license at \$50 per year and for renewal of senior license at \$60 per year; changes Continuing Education (CE) hours from 20 hours per year to 100 hours every five years and waives CE requirements for inactive status; clarifies that those on inactive status cannot practice ; and establishes senior status.

MOTION **Senator Werk** moved to adopt 24-1501-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 10].

24-1601-0701 Relating to rules of the State Board of Dentistry (Pending Rule).

Mr. Hales stated that this rule requires two years of internship under the supervision of a licensed Denturist, must be at least 24 months in length and not longer than 30 months unless approved by the Board. In addition it states that no Denturist shall disseminate or cause the dissemination of any advertisement or advertising which is fraudulent, false, deceptive or misleading.

MOTION **Senator Darrington** moved to adopt 24-1601-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 11].

24-1701-0701 Relating to rules of the Idaho State Board of Acupuncture (Pending Rule).

Mr. Hales explained that this rule is to comply with HB 034 passed in the 2007 Legislature. The changes in this rule define accredited colleges or universities; adds successful passage of an examination or other demonstration of proficiency as approved by the Board as a requirement for certification; and recognizes the training of those who have a Doctoral degree in Chiropractic, Dentistry, Podiatric Medicine, or Naturopathic Medicine from a college or university accredited by an organization approved by the U.S. Department of Education or the Idaho State Board of Education to apply toward the certification requirements.

Senator Hammond asked if the Idaho Board of Education approves accrediting organizations? **Mr. Hales** replied that he doesn't believe the State Board approves accrediting organizations. He believes they have the ability to accredit an in-state college or university that issues degrees.

MOTION **Senator Hammond** moved to adopt 24-1701-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 12].

24-2301-0701 Relating to rules governing the Idaho Board of Speech and Hearing Services (Pending Rule).

Mr. Hales explained that this rule sets out qualifications for audiologists, speech-language pathologists, aids and assistants; and hearing aid dealers and fitters. It also requires that supervision must allow for immediate feedback and includes audio/visual, in person or telephone contacts.

Vice Chairman Broadword asked if the Board felt comfortable that

telephone contact was sufficient? **Mr. Hales** replied that they did and used it for some of the remote communities.

MOTION

Senator McGee moved to adopt 24-2301-0701. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 13].

Vice Chairman Broadsword turned the meeting back to **Chairman Lodge**.

The Senators discussed the schedule for upcoming Rules.

MOTION

Vice Chairman Broadsword moved to approve the January 16,2008 minutes. The motion was seconded by **Senator Coiner**. 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

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 23, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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 and turned the meeting over to **Vice Chairman Broadsword** to begin presentation of the rules.

RULES:

16-0733-0801 Relating to Adult Mental Health Services (Temporary).

Scott Tiffany, Bureau Chief for Mental Health in the Division of Behavioral Health of the Department of Health and Welfare, explained that this temporary rule provides the framework for eligibility and provides an appeal process for adult consumers for the Division of Behavioral Health. Prior to this rule there was no formal appeal process. This rule applies only to services provided by or contracted through the Division of Behavioral Health. It does not apply to eligibility for Medicaid or services provided by Medicaid providers. Hearings will be conducted in the future concerning this temporary rule.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Martha Ekhoft, Consumer/Advocacy Director of the Office of Consumer Affairs (an advocacy and education office for mental health consumers for the State of Idaho), stated she is speaking on behalf of mental health consumers. They have concerns about the eligibility criteria and the ability to make an appeal regarding denial of services based on both clinical judgment and eligibility criteria. They would like a negotiated rulemaking so that consumers can be at the table to come to a fair and reasonable method of appeal or grievance for health consumers in Idaho. **Vice Chairman Broadsword** asked Ms. Ekhoft if she wants the Board to reject this rule which will put an appeals process in place when they don't have one now, or are is she asking the Department to go back to the table to work with consumers in the future to modify this rule? **Ms. Ekhoft** replied that she would like the Department to work with consumers to modify this rule in the future. **Vice Chairman Broadsword** asked Mr. Tiffany to address how the Department plans to get consumer input into this appeal process. **Mr. Tiffany** stated he appreciates the comments and plans to

hold hearings throughout this calendar year on this and the other dockets he's presenting today to solicit consumer input. He has received many written comments as well. The process of appeal is important to the Department and they wanted to get it into place as soon as possible, but they are certainly willing to hold hearings and get input throughout this calendar year. **Vice Chairman Broadsword** asked if that is why this is a temporary rule - one the Department is still working on? It puts a framework in place so that consumers can appeal now if they need to, but the Department is still working on it? **Mr. Tiffany** stated that is correct. **Senator Darrington** stated that his understanding is that if the Committee approves the temporary rules they will go into effect until such time the Department comes back to the Committee with pending rules. Is that correct? **Mr. Tiffany** replied that is correct. **Senator Werk** asked Mr. Tiffany to identify where the "ability for appeal" section of the rule is located. He replied on page 153 under 03, 01 & 02. **Senator Werk** then asked about the "notification of eligibility determination" section wherein it states the patient will have to wait two weeks to receive a determination. Why can't the determination be made quicker than that? **Mr. Tiffany** replied the process says within ten business days and is usually much quicker than that. In addition, if there is an emergency need they will meet that emergency need.

Senator Kelly asked why was there such an urgency to write this rule without the normal public comment process? **Mr. Tiffany** said the urgency was to create an appeal process for consumers which didn't previously exist. As previously stated, the Department plans to negotiate this year to solicit input from interested parties. **Senator Kelly** said the appeal process seems like a very small part of this rule. Could you have adopted the appeal part only as temporary and then done regular rulemaking for the balance? **Mr. Tiffany** replied that certain elements had to be established to make the appeal process make sense. **Senator Kelly** asked what happened before the appeal process was written? **Mr. Tiffany** stated that there was a process but nothing was in rule.

Judy Carroll, Social Worker and Director of Community Support Center, asked that the rule include a consumer-directed approach and that the Department invite consumers to the table in order to hear and understand their wisdom and perspective.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Senator Darrington asked if Ms. Carroll would prefer an absence of rules for uniform eligibility? **Ms. Carroll** replied not an absence of rules, but just wanted providers and consumers be invited to the table. **Senator McGee** asked Mr. Tiffany to clarify, didn't you state that in this process people will be able to comment on the rules? **Mr. Tiffany** replied that the Department fully intends to hear all comments during this process. **Senator Bair** commented to those in attendance that the cover page of the rule says "Public hearings concerning this rulemaking will be scheduled if requested in writing by 25 persons." There is the procedure, and the Department will have to respond.

Mike Coski, a consumer of mental health services, requested that the Department allow clients to have input in creating rules.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

Sally Legerski, a consumer of mental health services, stated that she is not in favor of the Behavioral Health Division of the Department of Health and Welfare defining the scope of voluntary adult mental health services.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

Jay Jordan, a consumer of mental health services, is opposed to section 102.01 of the rule that states “the Department determines eligibility for mental health services.” He stated this takes the right of choice from the mental health consumer.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

Mr. Tiffany stated that it is not the Department’s intent to limit choice. It pertains to services provided by the Department staff, not services provided by Medicaid Contract providers. The Department values input and has already met the minimum of 25 requests in writing for hearings.

MOTION

Senator Werk moved to adopt 16-0733-0801. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**. **Senator Hammond** abstained from voting because he had been present for only part of the discussion. **Senator Werk** stated that he understands the concerns expressed today but feels comfortable that Mr. Tiffany will make sure to have a robust negotiated rulemaking and the result will be that everyone will be satisfied with the result.

16-0710-0801

Relating to Behavioral Health development grants (Temporary).

Mr. Tiffany explained that this rule provides a standard process for the Division of Behavioral Health for announcing, scoring and awarding of development grants according to Idaho Code, Section 39-3134A. Development grant funding helps to increase the availability of mental health and substance use disorder services. Hearings will be scheduled for this rule during this calendar year. **Vice Chairman Broadsword** asked when will the Statewide plan described on page 133, Section 1, 01 be in place? **Mr. Tiffany** stated that this is the Statewide plan. **Senator Kelly** asked why is this a temporary rule? What was the timing? **Mr. Tiffany** said the Statute was passed last legislative session which directed the Division to develop rules to award the appropriations of the last legislative session. **Senator Werk** asked if there have been grant awards? If so, were the temporary rules in place to guide the awards? **Mr. Tiffany** replied there have been grant awards, but the rules were not in place at the time of the grant awards. The process was in place, but not the rule. It is the Division’s intent that the rules will be in place for this session and

any future awards.

MOTION

Senator McGee moved to adopt 16-0710-0801. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

16-0701-0801

Relating to Behavioral Health sliding fee schedules (Temporary).

Mr. Tiffany stated that this temporary rule provides the Division of Behavioral Health a sliding fee scale for adult mental health, children's mental health, and substance use disorders. It consolidates the three existing fee schedules into one chapter. It also updates the fee schedules in the adult and children's mental health programs to reflect current Federal poverty guidelines. This rule is in response to a legislative audit finding that the current fee schedule is out of date. Hearings will be scheduled for this fiscal year. **Vice Chairman Broadsword** asked if this sliding scale increased for mental health, but is it the same as the scale for substance abuse disorders? **Mr. Tiffany** stated that they are not the same. They are raising the threshold for mental health by adjusting the new rates to the new Federal poverty guidelines. **Vice Chairman Broadsword** asked if there was a change in the percentage of cost share for substance and alcohol abuse? **Mr. Tiffany** replied the percentages for substance abuse have not changed. **Vice Chairman Broadsword** asked why is there a disparity between the two and what happens if they have a co-occurring disorder? **Mr. Tiffany** replied that he can't explain the disparity. Regarding co-occurring disorders, ideally the Division will be able to move to the point where the first door the person enters into the system will be where they can receive help from both. **Senator Werk** asked where in the rule is the percent of poverty defined? **Mr. Tiffany** answered it is Definition 22 at the top of page 122 in the sliding fee scale. **Senator Kelly** stated that this seems to be a liberal use of the temporary rule process and she is a little concerned about the amount of temporary rulemaking going on. **Mr. Tiffany** stated that he appreciates her concern, however, this is a benefit for consumers because it will be a net decrease in the consumer's responsibility for services.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment #7]

Vern Garrett, CEO of Ascent Behavioral Health Services, circulated a fact sheet and explained that the proposed rule changes will significantly impact State funded clients receiving substance abuse treatment giving specific examples of those impacts.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8 and 9].

Vice Chairman Broadsword asked Mr. Tiffany if the Division will enter

into negotiated rulemaking in good faith if the Committee passes this rule? **Mr. Tiffany** replied that the Division has every intent to solicit input this year.

Senator Werk said that it appears we're going from an older version of the Federal poverty level to a more recent version which would mean that the same income would be lower in the percentage of poverty level. This would make the copay less than it was. Is that correct? **Mr. Garrett** replied that the substance abuse copay is going up twice the rate of the mental health. While this is a benefit for mental health, it is not a benefit for substance abuse.

Senator Bair asked Mr. Tiffany if these rules are an attempt to bring the Department in alignment with Federal regulations? **Mr. Tiffany** answered that it brings the adult and child mental health program into compliance with current Federal poverty guidelines, but the index is outdated for the substance abuse program. The sliding fee scale has not changed at this point for them. **Senator Werk** stated the sliding fee scale for substance abuse program is exactly the same as it has been previously. **Mr. Tiffany** stated that is his understanding. He would like to defer to Bethany Gadzinski, the Substance Abuse Disorder Bureau Chief, to answer that question. **Bethany Gadzinski** said that it is identical to the scale in the current Idaho Administrative Procedures Act (IDAPA) standards. They do not anticipate changing the way they do business. **Vice Chairman Broadsword** asked if they are enforcing the sliding fee scale now? **Ms. Gadzinski** stated that there are some issues regarding adolescents. Currently adolescents are at a zero copay instead of the previous 5% copay. That decision was made as part of the Interagency Committee on Substance Abuse Treatment and Prevention budgeting process to attempt to try to get more adolescents into treatment. The only other difference on the sliding fee scale is that drug courts don't currently have a financial eligibility; it is up to the judge and the drug court coordinator on who they enter into drug courts and treatment.

Vice Chairman Broadsword asked if the Department can give us some comfort that your Department is willing to negotiate with providers because Mr. Garrett brings up a serious concern. If part of the sliding fee is supposed to be paid by the client, who can't pay it, and the provider doesn't want to kick the client from treatment because they know the result, they are in a catch 22. **Ms. Gadzinski** replied that they absolutely intend to work with the providers and with the Interagency Committee who would have to be an integral part of any changes they would do to the rules. Senator Lodge is on that committee.

Senator Werk asked Ms. Gadzinski about the difference in the old and updated Federal poverty guidelines. **Ms. Gadzinski** explained that currently the Substance Use Disorders rule does have a correct poverty scale. That rule allows them to change every year and update it. So this is just moving it into a behavioral health fee scale so that all the fee scales are in together. They did not know the real disparity until they had them side by side because the two programs were very different before the Division of Behavioral Health became a Division. Now that they can see

them side by side they should be able to make some changes so that they are equitable. **Senator Werk** asked if the current schedule is the same schedule in the rule that **Ms. Gadzinski** has and she said that is correct.

MOTION

Senator McGee moved to adopt 16-0701-0801. The motion was seconded by **Senator Werk**. **Senator McGee** explained that based on the comments by Ms. Gadzinski and knowing that **Chairman Lodge** will be overseeing that process, his concerns have been alleviated and he is confident this is the correct way to go. **Senator Werk** commented that it is nice to have put the two fee scales together and realize the disparity. He said he looks forward to having the two fee schedules melded together into something that makes more sense. The motion carried by **voice vote**.

16-0403-0701

Relating to Fees for Community Mental Health Center Services (Repeal) (Temporary).

Mr. Tiffany stated that, with respect to passing of the previous docket, the Division respectfully requests the Committee consider repealing this rule which is the existing fee schedule for the Adult Mental Health Program which is based on the Federal poverty guidelines from the early 1990s.

MOTION

Senator Bair moved to adopt 16-0403-0701. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0717-0801

Relating to alcohol & substance abuse disorders (Temporary).

Ms. Gadzinski, Substance Abuse Disorder Bureau Chief, stated that this rule outlines how to appeal a denial of substance use disorder treatment services decision by the Department of Health and Welfare based on either eligibility criteria or on clinical judgment. It also defines the scope of voluntary substance use disorders services and describes the eligibility criteria, application requirements, individualized treatment plan, and selection of providers under these rules. **Vice Chairman Broadsword** asked about the definition of adolescents? What about those under 14 years old? It is sad to say, but there are children under the age of 14 who have drug and alcohol problems. **Ms. Gadzinski** acknowledged that there are, and replied that they will be looking at what to do with children (ages 9 - 13) in the Interagency Committee and in the negotiated rulemaking sessions. The other issue that will be addressed this year is intervention services for children and adolescents.

Mr. Garrett reported that his concern is the definition of adolescent being age 14 years and older. His organization is currently treating three 13 year olds and one 12 year old. He asked that the current definition be stricken from this rule and replaced with "under the age of 18". **Senator Bair** asked if it is proper procedure for the Committee to strike items from rules? **Senator Darrington** replied that the Committee can only accept or reject a temporary rule. If they accept these rules, they go into rulemaking in regard to making them pending rules, and that will be looked at. **Mr. Garrett** said that if this definition can't be stricken and replaced, he would be very upset if these children were no longer allowed to get treatment. Can they receive assurance from the Department that they won't enforce the new age definition until after going through the negotiated rulemaking

process? **Ms. Gadzinski** reported that she gives that assurance. She stated she would never want a child who needed treatment not to receive treatment.

MOTION

Senator McGee moved to adopt 16-0717-0801. The motion was seconded by **Senator Bair**. **Vice Chairman Broadsword** said this was based on the belief that the Department won't enforce the new age definition until after going through the negotiated rulemaking process. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 10].

Vice Chairman Broadsword turned the meeting back to **Chairman Lodge** to begin presentation of RSs.

ROLE SLIPS:

RS17425

Relating to Medicaid.

Mond Warren, Bureau Chief of the Bureau of Audits and Investigations, stated that RS17425 will give the Bureau the necessary statutory authority to protect limited program dollars and address fraud in all public assistance programs. It will fill the gaps where there are regulations with no statutory authority and will provide the necessary authority for administrative remedies for fraud within all public assistance programs. .

MOTION

Senator Darrington moved to print RS17425. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 11].

RS17379

Relating to Public Assistance Fraud.

Mond Warren explained that RS17379 will give the Department the necessary statutory authority to investigate client eligibility fraud and benefit fraud within their programs and work towards protecting their limited program dollars and resources. It also distinguishes between the Department and the Attorney General's responsibilities. It is proposed legislation to redefine the definition of public assistance to include State only assistance. It currently only includes Federal assistance.

MOTION

Senator McGee moved to print RS17379. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 12].

RS17399

Relating to Marriage.

James Aydelotte, Bureau Chief of the Bureau of Vital Records and Health Statistics, explained that RS17399 will clarify the list of officials

that solemnize a marriage. **Vice Chairman Broadsword** asked if the Committee moved to print this RS last year? **Mr. Aydelotte** replied that they did, but after it left this Committee it disappeared and never made it to the house. When it was discovered what happened it was too late to proceed.

MOTION **Vice Chairman Broadsword** moved to print RS17399. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 13].

RS17428 Relating to Child Support.

Kandee Yearsley, Child Support Bureau Chief for the Department of Health and Welfare Division of Welfare, explained RS17428 is concerning the Reasonable Cost definition currently in Idaho law which states that if insurance is available, it is reasonable. The Division is proposing to revise this definition to align with the Federal Government revision of 2006 which states that health insurance is considered reasonable in cost if the cost to the obligated parent does not exceed 5% of their gross income.

MOTION **Senator Darrington** moved to print RS17428. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 14].

RS17432 Relating to Insurance.

Larry Tisdale, Chief of the Financial Operations Bureau in the Division of Medicaid, explained that the purpose of RS17432 is to bring Idaho in compliance with Federal law by addressing requirements imposed by Section 6036 of the Deficit Reduction Act of 2005. These changes will enhance third party identification and recoveries of the State's Medicaid Program.

MOTION **Senator Werk** moved to print RS17432. The motion was seconded by **Senator Bair**. **Senator Coiner** asked if this RS should come under Health and Welfare or Insurance? **Mr. Tisdale** replied that it was written in the Insurance part of the State Statute, but Insurance deferred to him. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 15].

RS17400 Relating to Medical Assistance.

Larry Tisdale said the purpose of RS17400 is to require consent of the Department of Health and Welfare to settle claims against third parties when settlements affect the Department's recovery rights. It would establish that priority is to be given to medical expenses incurred as a

result of the occurrence giving rise to the payment to recipient of medical assistance. It would preclude the allocation of damages among different classes of damages without the consent of the Department.

MOTION **Senator Werk** moved to print RS17400. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 14].

MOTION **Vice Chairman Broadsword** moved to approve the January 17, 2008 minutes. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Chairman Lodge announced the remaining two Rules for tomorrow's meeting.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 16].

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

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 Annex 5th Floor.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 24, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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 and turned the meeting over to **Vice Chairman Broadsword** to begin presentation of the rules.

RULES:

16-0601-0701 Relating to Family & Children's Services

Shirley Alexander, Child Welfare Program Manager with the Division of Family and Community Services in the Department of Health and Welfare, explained these rules are to allow an individual whose name appears on the Central Registry to petition the Department of Health and Welfare to request that their name may be removed from the registry. It is incumbent on the individual who is petitioning to demonstrate to the Department that he or she has no subsequent substantiated referrals or criminal history that pose a safety threat to children. **Vice Chairman Broadsword** asked so there are no rules in place at this time that will get your name off the registry once you are on, this rule lays the ground work to do that? **Ms. Alexander** replied that is correct. There is no process in place now for individuals to have his or her name removed once they're put on the register. **Chairman Lodge** said that Senator Kelly, Senator McKenzie, and Representative Luker met and came up with ideas from the discussion in the January 16, 2008 Committee meeting. They are going to meet with Ms. Alexander to further discuss the due process for individuals before being placed on the register. She said she is in favor of approving this rule because it has a lot of good things, if the Department will give the assurance that they will work with them on this. **Ms. Alexander** reported that the meeting is scheduled for Friday, January 25, at 3 p.m. **Senator Werk** asked if the federal government has statutes that require us to have this in place? **Ms. Alexander** replied that the Federal Adam Walsh Act requires a Child Protection Central Registry and the Idaho Code, Chapter 16, also requires them to keep a list of individuals who have substantiated report of abuse and neglect for the purpose of facilitating the Department in keeping children safe from individuals who have previously abused or neglected a child. **Senator Werk** stated that the rules presented here don't provide a lot of due process. If you get on the list you may never know it. Have you acknowledged that there is a lack of due process in

these rules? **Ms. Alexander** replied that they had someone from the American Bar Association from the Legal and Judicial Issues, look at their Central Registry process and they felt the Department had due process in these rules. The piece you are talking about is that the Department puts an individual on the registry and the due process comes after they are notified they are on the registry. It is her understanding that the concern is the individual doesn't know they are going to be on the registry before they are there, and that is true. **Senator Coiner** asked is it a first class letter that you send, or do you get notice back that they have received it? **Ms. Alexander** said it is not a registered letter. The only way they know that they have not received it is if the letter is returned to the Department as undeliverable. **Senator Coiner** stated that you really have no way of knowing that the person you sent the letter to actually received it. **Ms. Alexander** said that is correct.

MOTION

Senator McGee stated that with the knowledge that the Committee has formed a group to alleviate some of these concerns and will work with the department to come up with ideas, he moved to adopt 16-0601-0701. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**. **Senator Werk** voted nay.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Chairman Lodge said that she and **Vice Chairman Broadsword** each will be handling parts of today's meeting. She then gave some guidelines for public testimony for the meeting. She stated that this summer she was notified of some concerns about these rules and met with the Governor's office about the concerns. Senator Coiner and she asked the Attorney General's office to give an opinion of these rules. She has asked Deputy Attorney General, William von Tagen to come and explain the letters written and other information from his office.

24-2401-0701

Relating to rules of the Board of Naturopathic Medical Examiners.

Deputy Attorney General William von Tagen, explained that his office does not represent the Board of Naturopathy and they do not represent the Board of Occupational Licensing, they both have separate counsel. He is in attendance in response to questions from the Committee and to further explain the letters sent to the Committee. He stated he will focus first on the parts of the rules. First, in Rule 125, Qualifications for Licensure, some are just a restatement of the Idaho Code and provide no detail about how it will be implemented. Second, Rule 130, Approved Programs of Naturopathic Medicine, states "All applicants shall have attended an Approved Naturopathic Medical Program". The statute requires not only attending, but completing the program. Also, there are no standards set in this rule as to what is required for approval. Third, Rule 135, Approved Naturopathic Examination, again this rule doesn't provide specific standards. It should either identify a specific exam or define what subject should be tested for what a passing score is.

Mr. von Tagen also discussed the answer sheet he provided to the

Committee.

Senator Coiner asked Mr. von Tagen to explain the letter of January 18, 2008 mailed to Senator Coiner, wherein he asked whether the Board of Naturopathic Medical Examiners has illegally issued licenses or taken any other illegal actions. **Mr. von Tagen** explained that to the extent this Board has issued licenses to individuals who have not completed a doctoral level program supervised resident study in naturopathic medicine, or passed a qualifying examination, the Board appears to have exceeded the scope of its authority under the statute. **Senator Coiner** asked since the licenses were granted illegally, or without authority, and yet the only choice to void those licenses is to go to court, whose responsibility is it to clean up that discrepancy? **Mr. von Tagen** explained that there are two approaches: the Board itself could go forward and seek to revoke those licenses it has already issued. There would have to be due process - the individuals whose licenses were revoked, if they thought that was improper - could appeal that decision. The other approach would be if someone could bring an action stating that the issuance of those licenses exceeded the Board's authority and therefore they are void. There would have to be a declaration by a court in terms of who has the authority to do that and what process they would have to follow.

Senator Werk asked Mr. von Tagen to give a brief description of himself and his duties. **Mr. von Tagen** stated that he is a Deputy Attorney General and has been with the Attorney General's office since 1990. Since 1995 he has been Division Chief of the Intergovernmental and Fiscal Law Division. In one aspect of that, he supervises all the attorneys that provide services to fiscal entities; the other side is to provide opinions and legal guidance to the Legislature in accordance to statutory constitutional duties to the State. They provide an opinion to any Legislator who requests it on a matter. They have been asked to provide an opinion here. **Senator Werk** asked when you provide an opinion, are your opinions biased or do you have a framework you use to provide objective opinions to the Legislature? **Mr. von Tagen** answered they try to predict how a court would rule on the issue. They are prognosticating based upon their review of the law and their understanding of the facts. **Senator Werk** said he asked these questions to assure the audience that when we get opinions from the Attorney General's office, we get opinions based on the factual basis of the law.

Senator Hammond thanked Mr. von Tagen for his assistance in the issues here. He stated that in his understanding, the reason to license someone is to provide some assurance to the public that the individual has a certain level of education, practical experience and expertise, that the public can trust is available to them when they access service from that individual. In the rules before us today, you have pointed out some substantial holes and defects. Does it make any sense to hear testimony, is there any testimony that could overrule these defects we've heard? **Mr. von Tagen** stated there may be other attorneys who have different opinions, but a State licenses to exercise its police powers - it has to do with the health and safety of individuals, and this issue covers both.

Senator Hammond asked is it inappropriate of the Committee to say we have enough information here to send these rules back for another work? **Mr. von Tagen** stated that is the Committee's decision. **Chairman Lodge** thanked Mr. von Tagen for all the work he did on this for the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2, 3, and 4].

Eric Milstead, Principal Legislative Research Analyst with Legislative Services, stated that he noted what might be considered a technical defect in the pending rules, which deals with the address and location of the Board of Naturopathic Medical Examiners. The Bureau of Occupational Licenses and the Board severed its contract in mid November. The Bureau of Occupational Licenses is an umbrella entity that provides numerous services to Boards and Commissions. These services include administrative, fiscal, investigative and basic record keeping. If the contract is no longer in effect, who or how are these services being performed by the Board. There are other Boards that exist outside the Bureau of Occupational Licensing, such as the Board of Nursing, Board of Medicine; however, those boards all have full-time personnel (FTP) that are approved by the Legislature. They all have spending authority that is approved by the Legislature. The second point deals with the Scope of Practice, 100 Section 54-5104 of the pending rules. This section adds "practical experience" to the list of approved training. This is outside Idaho Code which only lists "education and training".

Senator Werk asked Mr. Milstead to give a brief description of himself and his duties. **Mr. Milstead** stated he is an Attorney with Legislative Services, a nonpartisan staff for the Legislature. One of the tasks they perform is to conduct rule reviews on every rule the Legislature will hear. This includes legal analysis as to whether or not the proposed or pending rules fall within the guidelines of the Statutes. He has been with Legislative Services since 2001

Senator Coiner asked is there authority in the Statute for this Board to function outside the Bureau of Occupational Licenses? **Mr. Milstead** stated that the Statute provides that the Board exist within the Bureau of Occupational License. As he reads it, it doesn't require that the Board reside there, it simply is the current law that it reside there. Absent a change in the law, that's where it should be. **Senator Coiner** asked if it is his opinion that since the Board is no longer operating within the Bureau of Occupational Licensing, that they are outside their authority to even function? **Mr. Milstead** stated that would be a question he would have to consider more fully.

Senator Darrington asked if in Mr Milstead's or Mr. von Tagen's experience, have they seen other Boards be removed from or remove themselves from the Bureau after having been there? **Mr. von Tagen** stated he has not. **Mr. Milstead** stated he knew of the reverse, of a Board being removed to the Bureau but he doesn't know of one being removed

from the Bureau. **Senator Coiner** asked Mr. von Tagen to answer the question he asked Mr. Milstead: in his opinion, since the Board is no longer operating within the Bureau, are they outside their authority to even function? **Mr. von Tagen** replied that he would want to look at it again, but by Statute, that is where they are - under the Bureau.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

Chairman Lodge turned the meeting over to **Vice Chairman Broadsword** to preside over the rest of the presentation of this rule.

Clinton Minor, Attorney for the Board of Naturopathic Medical Examiners, thanked the Committee for the opportunity to present these rules. **Senator Werk** asked if Mr. Minor is a Registered Lobbyist? **Mr. Minor** replied that is true. He has been asked by the Board to represent them in legal issues as well as in presentation of information. He also stated that he worked with the Attorney General's office for five years and has been in front of Committees and evaluated work on behalf of the Attorney General's office. He would like to address five issues raised by the Attorney General's office and Mr. Milsted. First is the address. Upon being retained by the Board on December 28, 2007, his first legal advice to the Board was that they exist under Bureau of Occupational Licenses, and that any and all monies they receive had to be deposited with the Bureau, that any and all expenses had to be presented to the Bureau, and advised them that they needed to make amends with the Bureau and get a contract in place. The Board voted to support that recommendation. They approached the Bureau with a request that a contract be provided for them, but the Bureau declined. He doesn't believe this Board has a right to function in fiscal matters outside the Bureau.

The second issue is concerning education in the rules. There is a portion of the rule that talked about accrediting agencies. This portion of the rule was taken out, but somehow wasn't deleted from one copy of the rule.

Vice Chairman Broadsword said she has three different sets of the rules before her and is trying to determine which set is the correct one. **Mr. Minor** stipulated the correct set - November 14th, page 146, rule 130 should have only one sentence there. The incorrect set talks about the three different agencies. **Vice Chairman Broadsword** asked why the correct rules weren't delivered to the Secretary prior to the start of the Legislative session? Why wasn't that done? **Mr. Minor** stated that the appropriate entity for delivery of those rules is the Bureau of Occupational Licensing. He then explained how the wrong set of rules was circulated and how the corrected copy was circulated. **Chairman Lodge** stated she was still presented the incorrect set of rules on January 22, 2008 by Mr. Stevenson. The reason the Bureau didn't deliver the rules is because there is no relationship between the Bureau and the Board of Naturopathic Medical Examiners, so they won't provide services. She stated this has never happened before in her eight years with the Legislature. **Mr. Minor** apologized.

Senator Darrington stated the Board needed Mr. Minor long before they hired him. The Bureau of Occupational Licenses is expert at organizing,

supervising and running Licensure Boards. They know what they're doing. He doesn't know what caused the illegal divorce, but because of the various sets of the rules and the fact that there is obviously not compliance yet with the supervision of the Bureau, are you in agreement that there is enough discrepancy with the rules and the statute to require that we're back to the drawing board on these and they make a stab at getting remarried and then redrafting a set of rules which is correct and presented to this Committee in proper form? **Mr. Minor** replied that the fact that there is a separation between the Bureau and the Board, doesn't change the value or appropriateness of the rules in his opinion. By addressing the issues that the rules are out of compliance with the Statutes, after having extensively reviewed the rules, he believes that there is truly only one discrepancy with the rules, and it is just a lead in sentence and has no relevance.

Senator Coiner stated that from his perspective the Board isn't operating legally, the rules presented to the Committee aren't proper, and in his opinion there is only one option the Committee has. Can Mr. Minor see that the Committee has any other option than to reject these rules? **Mr. Minor** replied that all the rules were adopted by the Board during the time in which the ongoing relationship between the Bureau and the Board was still in place. There was an evaluation by the Attorney General's office and changes were made after that evaluation. The divorce doesn't change the value of the rules. Whether the fact that the accurate rules showed up today voids the ability of this Board to ask the Committee to approve them is a decision the Committee has to make. Regarding the appropriateness of the rules, it is his strenuous opinion that they are only out of line with the statutes in one point that has very little meaning or value one way or the other in the interpretation. If the decision is that the Board isn't here appropriately, there is no point in going forward, but he would like to explain where he believes these rules are appropriate and can move the State forward in the process for the Naturopathic profession in Idaho.

Senator Kelly said that the Administrative Procedure Act sets forth a very specific process to go through in adopting rules, and even in this Committee having authority to review rules. We need to make sure we properly have something before us to act on. She asked to have Dennis Stevenson speak to the process that has gone on to make sure that the Committee is looking at a rule they have authority to look at and is the right text. **Dennis Stevenson** explained the mistakes in delivering the correct version and confirmed that the rules before them is the correct version.

Mr. Minor stated one method of outlining what an appropriate educational program or testing method would be is to put extensive detail in the rule. There are Boards that have extensive outlines of what those should be. There are also Boards that completely defer those evaluations to independent evaluation agencies. A number of Boards have rules almost identical to the rules of the Board of Naturopathic Medical Examiners. He gave examples from the Board of Medicine, Board of Acupuncture, and Board of Nursing Homes. One problem of specificity of agencies providing tests and/or education is that those agencies can fall in or out of

accreditation. **Vice Chairman Broadsword** asked are you suggesting that the Board become an accrediting agency? **Mr. Minor** said the Board is granted the authority and duty to determine whether or not an educational institution provides the required education level necessary for a graduate to sit for this test. They have the opportunity to name other entities to be their evaluator. The responsibility, duty and power to decide whether an education is sufficient is maintained with the Board. **Vice Chairman Broadsword** stated that she was there when this original legislation was passed, and it was never the intent for the Board to decide what could and could not be approved as far as who a doctor and a physician were. Naturopathic physicians had medical training, naturopathic doctors could continue to hang out their shingle, but could not be licensed. **Mr. Minor** said he would never argue about the intent of the statute. The statute does not say that the Board gets to decide who gets to be a doctor or a physician. They have the specific statutory obligation to determine whether a program meets the educational requirements and determine whether a test meets the testing requirements.

The fourth issue concerns the language that involves practical experience under the Scope of Practice, 100 Section 54-5104, discussed by Mr. Milsted. *Idaho Code, Section 54-5103*, specifically talks about "an applicant who has completed a doctoral level course of study that includes course work and practical experience." This wording about practical experience comes right out of the statute.

The last issue is the only one that has any substance. The term "attended an approved Naturopathic Program" Rule 130 on page 146. This was only a lead in sentence to a second sentence that has been removed. This sentence has no value in the rule. The rules of administrative procedure allow this Committee to adopt the rules having stricken part of the rule. This sentence can be stricken from the rule.

Senator Darrington stated the issue of licensure of Naturopaths has been around 24 years. A majority of the Legislature voted for licensure and a majority of this Committee did. Now it is our function to make it work. But there is still great dissension among the Naturopaths. Do you think that considering the amount of dissension there is in some Naturopathic Physicians concerning these rules, that the Board would be better off to defend the rules in court or rewrite the rules and try to address the concerns and remarry them back to the Bureau of Occupational Licenses, or take your chances? **Mr. Minor** replied that the only specific concerns that have been voiced about the rules are the five concerns he has addressed. If there are specific concerns other than personality or political or practice dissension, he would be happy to address those concerns. The only way to address the question about litigation would be to address those concerns. The five issues he already addressed he would simply state to the court that this is how it is done and give examples, and that would finish the case. If these rules are not promulgated he has been told specifically, by at least two intent parties, that they feel that they are being deprived of their rights for licensure and they will be bringing action against the Board and the State concerning the lack of progress on these rules. He stated this is not a threat, but the potential for litigation out there shouldn't determine how we look at these

rules. The issue is whether these rules are in compliance with the statute and accomplish the end that provides us with a process whereby we can protect the public and provide for licensure. He believes that they do.

Vice Chairman Broadsword stated that Mr. Minor is a really good lawyer and he has convinced her that the statute is flawed and should be repealed.

Kris Ellis, Representative for the Idaho Chapter of the American Association of Naturopathic Physicians, stated that they do not feel the rules address the intent or the letter of the law in many areas. She referenced her handout of the rules which has red and yellow highlighting on the areas that they feel are incorrect in the rules. She stated that this Board has been appointed for two years. They have gone through promulgated rulemaking, public hearings and negotiations, and these issues have been brought up time and time again and they have not been addressed. She asked that the Committee reject the rules in their entirety. Also, because of the problems in these rules they believe that the only solution is to revisit the Statute. **Senator Hammond** asked Ms. Ellis to help him understand who she represents. **Ms. Ellis** stated the Idaho Chapter of Naturopathic Physicians are all physicians who live in Idaho plus one who lives in Spokane; the American Society of Naturopathic Physicians works with the U.S. Department of Education and other states on established standards for Naturopathic Physicians across the country. **Vice Chairman Broadsword** asked how many members of that association there are? **Ms. Ellis** replied approximately 25 and growing.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

Ken McClure, Attorney for the Idaho Medical Association (IMA), urged the Committee to reject these rules. They have been involved in negotiation and drafting of this legislation and thought they would see a different set of rules and regulatory criteria than they see. There are two reasons for rejecting rules: one is if they are inconsistent with the statute and the other is if they are contrary to Legislative intent. In dealing with this issue the Medical Association has always taken the position that the Naturopaths should not be licensed. Finally a group of Naturopaths came forth and said there are differences in education - some Naturopath Physicians graduate from college and go on to attend and graduate from four years of post-doctoral education. These people should be allowed to practice. It was the IMA's conclusion that there was something there. They sat down with the opposing groups of Naturopaths to try to come up with a statute to license those who are more highly educated to do that which they are educated to do. They did that, but with the anticipation that those who did not meet those high educational criteria would not be licensed. They could continue to do what they were allowed to do before the statute was passed, but they would not get a broader scope of practice by virtue of the passage of the statute. The reason you're here today is that somewhere following the enactment of the statute and following the adoption of these rules, the landscape changed and people who had not been graduates of these programs somehow believed they

had a right to be licensed too. That was never the intent.

Sandra Prescott, a practicing Naturopathic Physician in the State of Idaho, said she received her undergraduate degree from Idaho State University, Post-Doctorate from American College and completed the Intensive Review of Internal Medicine at Harvard University. This is affecting her life and her livelihood. She asked for rules and to get this cleaned up because Naturopaths are needed in the State of Idaho.

Todd Schlapfer, a graduate of National College of Natural Medicine. As the former Legislative Chairman for Idaho Naturopathic Physicians during introduction and passage of the Naturopathic Physicians Licensing Act in 2005, he asked the Committee to completely reject these pending rules. He is very interested in moving forward to a solution, but believes that will require them to revisit the statute.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

Kitty Kunz, a lobbyist with the Idaho Association of Naturopathic Physicians, was hired by them in 2006 and began attending the Board meetings and the rulemaking process. When there was dissension with the former attorney, Kate Christenson from the Attorney General's office came in and guided them through the final steps to the rules before you. In Ms. Kunz's opinion these are good rules and we need to pass them. Also, there are over 150 Naturopathic Physician members in this Association and the majority of them are Doctoral educated physicians.

Senator Werk commented that he knows Kate Christenson and feels Ms. Kunz just drug her name through the mud. Ms. Christenson was asked to step into a very difficult situation and did her best with the obvious mess we've had. He stated he knows that Kate Christenson is an excellent employee at the Attorney General's office and deserves a lot of credit for stepping in and helping out. **Ms. Kunz** replied that she in no way meant to drag Kate Christenson's name through the mud. She felt Ms. Christenson did an excellent job.

Vice Chairman Broadsword asked Ms. Kunz why the rules vary so much from the Legislative intent that was discussed when the original Statute was passed? **Ms. Kunz** replied she didn't know the Legislative intent, she just knows the advice Ms. Christenson gave. **Senator Coiner** had a short discussion with Kate Christenson and she did not in any way give him the impression she approved these rules, nor did the Attorney General's office.

Dr. L. V. Hicks, Chairman of the Board of Idaho Board of Naturopathic Medical Examiners, stated that they have struggled as a Board for the past two years. He had comments on two issues. First, they are not divorced from the Bureau. He characterized it as making a mistake and spending a night in the dog house. He and Tana Cory, Bureau Chief for Occupational Licensing, had a discussion about signing a contract. But, the Board spent long hours during negotiated rulemaking and failed to get

it signed. It was no ones intention not to sign it. The administrative attorney they had for the last two years had a difficult time making decisions about their statute. He wishes they had hired Mr. Minor earlier in this process. It is the Board's desire to be with the Bureau and they hired Mr. Minor to help them in this process.

Chairman Lodge said she has three letters written to him from the Governor's office advising him that there were problems with the rules and exactly where his concerns are. She asked Dr. Hicks if he ever wrote back to the Governor? **Dr. Hicks** stated that he did, but doesn't have them with him today. They tried to address every concern the Governor had, but the Board's process is one of consensus and it just didn't work out.

Chairman Lodge asked if he has a better feeling about working together and getting rules that not only go with the statute, but with the intent of the legislature? Does he think he can go back with the Board and take what he's learned through this process and put some rules together that the Board could work under and that the Governor and the legislature could accept? **Dr. Hicks** said the Board has had a chance to address the issues that have been brought up, and he has poled the Board as to whether or not they felt appropriate about the rules they submitted to the Committee. He has heard from three of the Board members who asked him to report to the Committee that they felt these rules are in line with the statute.

Senator Werk thanked Dr. Hicks for coming and asked if he was around for the passage of the legislation? **Dr. Hicks** said he has been involved for about eight years now. **Senator Werk** asked, if you were involved in the initial legislation that finally passed, then you're aware of the provisions of *Idaho Code, Section 54-5106*, which is the exemptions chapter of the legislation, is that correct? **Dr. Hicks** said he is aware of it. **Senator Werk** said then you're also aware that *Idaho Code, Section 54-5106*, was specifically placed in the legislation to make peace with those who would not be licensed, but would be left alone by being exempted from licensure and those that would be licensed under very stringent requirements. **Dr. Hicks** replied that provision was put in at the last minute and the Association as a whole disagreed with it. It replaced a grand fathering statute. It was the intent of the body of the people licensed in this State that all qualified people be licensed. The qualification was developed by Dr. Mahoney and Dr. Clausen. They provided to the Board what the intent was. This happened almost eight years ago.

Senator Kelly asked given the situation with the Bureau of Occupational Licensing, where is the "corporate headquarters" of this Board and where are records and applications being kept? **Dr. Hicks** replied they still see themselves as part of the Bureau. The office location is now his office address. The records are being kept by Dr. Wilshire who is only acting as custodian. All the documents that were housed in the Bureau were electronically transferred and are now stored on his computer. **Senator Kelly** asked where are the applications being sent? **Dr. Hicks** replied that there aren't any applications at this time.

Senator Hammond stated that never before has he heard of someone threatening to sue this legislature because they don't adopt a certain rule that has been promulgated. Would you comment on that please? **Dr. Hicks** replied that the Board has no intention of suing the legislature. The Board worries that it may be sued because of comments that have been made by certain individuals.

Nancy Kerr, Executive Director of the Idaho Board of Medicine, expressed the concerns of the Idaho Board of Medicine that the purpose of licensure is public safety and the assurance of education and training. Their concern is that the rules do not appear to be in the best interest of public safety at all junctures and these were concerns expressed during the hearing process and they continue to reiterate them.

Karie Jonak, Secretary of Idaho Association of Naturopathic Physicians, stated that she has an issue with the part of the rules that address the school system and the test, in particular. She said that it is not a national test and that many of the members of the Association cannot take it unless they go to a specific school. Many doctors in the Association did not go to the listed schools because the schools weren't available at the time they received their training. They are not going to return to school after doing their jobs for many years. There is no one test that will meet the requirements of this group of doctors. When putting the rules together they purposely did not name a particular school or test to allow for that and to allow for future changes so that they wouldn't have to keep making changes to the rules. **Vice Chairman Broadsword** said the Committee looks at rules every year, and should they need to update the rules to accept a new school they are always here to hear those.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 8].

Brent Mathieu, a Naturopathic Physician in Boise, stated he agrees with the Deputy Attorney General's position and asked the Committee to reject these rules.

Michael Karlfeldt, a Naturopathic Doctor and a Board member of the Idaho Naturopathic Physicians, stated he would like the Committee to vote to accept these rules to include other legitimate paths to becoming a Naturopath. He asked the Committee to read the letter he submitted with background information about other legitimate paths.

Senator Werk asked whether he thinks it would make sense for a neurosurgeon to be sanctioned by the State as a neurosurgeon who never had formal education to become a neurosurgeon, but had tinkered all his/her life with brains or spinal cords and now felt that he/she had commensurate experience to become someone accepted as a physician to form those tasks with the auspices of the State providing an umbrella? **Mr. Karlfeldt** answered that none of the people in his organization have just been tinkering at becoming Naturopathic doctors. The majority of them have training from very legitimate schools and many have 20 years of practical experience. Just as with medical doctors - a general

practitioner would never be able to do neurosurgery - it is the same with naturopathic doctors. They would need specialized training for special areas. He also stated that he doesn't know of anyone in the State of Idaho who has been harmed by a naturopathic doctor - it is a very safe profession.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 9].

Mr. Minor stated he believes the rules are consistent with the technical language of the Statute. There are two reasons why the Committee might reject these rules: 1. An assumption that the rules are inconsistent with the Statute and 2. The question of whether these rules meet the intent of the Statute. He said he can't address that, but he can address the issue of education - formally trained physicians and practically trained physicians. There are people who have nothing more than practical training, they've learned their profession over the years. But there are a lot of people who have legitimate, four year doctoral degrees that didn't graduate from the schools that are allowed to take the Naturopathic Physicians Licensing Exam. The intent of these rules is to allow people who have a legitimate educational background to present it for evaluation. When it proves to be a legitimate educational background, to have them to sit for a test that allows all legitimate applicants to take to prove their muster. If they can prove their muster through the test they get to call themselves a naturopathic physician and hang a license on their wall which distinguishes them from those who have not passed the test to prove their training and background.

MOTION

Senator McGee moved that the Committee reject 24-2401-0701. **Senator Hammond** seconded the motion.

Senator Darrington said that no matter what action this Committee takes on this day it does not interfere with the ability of citizens to go to the provider of their choice in the naturopathic profession.

Senator McGee said that was one comment he was going to make. He also said this is the most clear-cut example of rules that have gone awry. It is very clear to him that this is a set of rules, based on a law passed a couple of years ago, that is dysfunctional. He has received many letters, and through all this public testimony, it is very clear that the parties need to go back to the drawing board and come up with a set of rules that individuals who practice this medicine can use as guidelines in their practice.

Chairman Lodge stated that her biggest concern is the health and safety of the citizens of Idaho. If someone has a license from the State of Idaho, that puts the faith of the State of Idaho behind that license. When she goes to a doctor's office she looks at the licenses on the walls because this is her health or the health of her family and she wants to be sure that credibility is there. Therefore she said she will vote to reject these rules. She has spent hundreds of hours on this issue and is confident that Mr. Minor can work with this group of naturopaths to come up with rules that

work.

Senator Hammond stated that he respects Mr. Minor, but the legislature has an attorney who works for them who has cast quite a bit of doubt over the efficacy of these rules. For that reason he will support this motion and urges the naturopathic profession to sit down and talk to each other enough to come to a unified voice and present to the public that they are a profession that can be believed in.

Vice Chairman Broadsword said that she believes the Statute is flawed and needs to be repealed. However, she will hold that legislation if she can be assured that they will get together to work to try to find a solution and a set of temporary rules you can work under. If the Statute needs amending, fine, but she will have the legislation to repeal the statute ready. If naturopaths want to practice under licensure, they need to work together. She then called for a vote on the motion to reject. The motion carried by **voice vote**.

Vice Chairman Broadsword turned the meeting back to **Chairman Lodge**.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 5:20 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 28, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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.

MOTION: **Vice Chairman Broadsword** moved to approve the January 21, 2008 minutes. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Chairman Lodge stated they will take a tour of a pharmacy today. She then introduced Richard Schultz, Deputy Director of the Department of Health and Welfare. Director Richard Armstrong was scheduled to be here, but he is ill today. Deputy Director Schultz then introduced Richard Humiston, Administrator for the Division Management Services, who will present the Department's Budget.

GUEST SPEAKER **Richard Humiston**, Administrator of Division Management Services, presented a brief explanation of the Department's 2009 Budget.

Chairman Lodge asked if the \$320,300 one-time settlement and fees for the Jeff D. lawsuit will end this suit? **Mr. Humiston** said he understands that there has been a preliminary Intent to Appeal filed by opposing counsel.

Senator Darrington stated the Judge vacated the Jeff D. lawsuit in the late fall after 25 years and seven years of intense effort by the Department of Health and Welfare through the Idaho Council on Children's Mental Health (ICCMH), this means the suit is over. When he awarded those attorney fees, it was a negotiated settlement that the Judge accepted; it was not what the plaintiff's lawyers sought for attorneys fees, it was some number less. They have noticed an intent to appeal and they have time frames in which to do that, but he has not heard that there is a decision that they will or won't appeal, they simply noticed. They will probably be on relatively thin ice in regard to that, and if they do appeal and it goes to the 9th Circuit it will be a long, long time.

Senator Werk asked concerning the pharmacy cost management, you saved \$2 million (page 2), what is the overall budget for that - the number that you saved \$2 million from? **Mr. Humiston** stated he doesn't have that figure with him and will have to get back to the Committee.

Chairman Lodge asked what the Eligibility Programs Integrated Computer System (EPICS) replacement system time line is (page 3)? **Mr. Humiston** replied they will finish most of the programming by March, finish the testing in April, and come live sometime in June.

Senator Werk stated that the \$25 Child Support fee from the Deficit Reduction Act, not only hits non-custodial parents, but the State has to lay out \$400,000 in general funds (page 4) to send to the Federal Government to comply with requirements that basically are insane. This is frustrating to say the least.

Chairman Lodge said most of the letters she has received lately have been complaints about having to pay that fee. She stated she thought this budget summary will be very helpful as a quick reference for the Committee and for answering constituent's questions.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

MOTION **Vice Chairman Broadsword** moved to approve the January 22, 2008 minutes. The motion was seconded by **Senator Hammond** . The motion carried by **voice vote**.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 3:31 p.m.

TOUR: The Senators left to tour Walgreens Pharmacy.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 29, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign in sheet.

CONVENED: **Chairman Lodge** called the meeting to order.

MOTION: **Senator Bair** moved to approve the January 23, 2008 minutes with the stipulation that “adopt” in the Motion for RS17400 be changed to “print.” The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Chairman Lodge introduced today’s guest speaker, **Leslie Clements**, Administrator of the Division of Medicaid.

MINUTES: **Ms. Clements** presented information on the Idaho State Children’s Health Insurance Program (SCHIP).

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Chairman Lodge asked about a situation where the mother is medicaid eligible but the father is not and he refuses to pay child support. Are the children eligible? **Ms. Clements** said you’re talking about a divorce situation where the father isn’t living in the home and there is some kind of court order. This can depend on whether health insurance is addressed in the judgement. They have been discussing with the Division of Welfare and the Financial Management Services about how to make coverage for these children happen. The first priority of a child support program is to make sure those kids get that financial support. There is a section in the Medicaid Program that is all about recovery - identifying any other third party coverage that is available primary to Medicaid.

Chairman Lodge turned the meeting over to **Vice Chairman Broadsword** because she had to attend another meeting.

Senator Werk said in totaling up enrollment there are about 26,000 children in CHIP oriented programs, and there are approximately 18,000 who aren’t. Looking at Federal allocations there is almost \$37 million in

carry over. What do we need to do to get some of the 18,000 on board - noting that there are probably some that we'll never get on board? Also, please talk about why there is such a huge carry over. **Ms. Clements** said there are 18,000 or 19,000 uninsured but eligible kids. It is an area that the Federal government wants the Department to pay attention to. There are many reasons, and they have worked with a number of community partners and researched why families who are eligible wouldn't apply. There are some administrative barriers that exist, for instance the application process is difficult. The Division of Welfare has been doing a really good job at re-engineering the application process and working to streamline that to get a simplified application form for children that is only two pages. This will reduce the complexity of applying for coverage. The other issue is some of the stigma associated with applying for Medicaid. They are working to create user friendly brochures and posters that talk more about what the need is. They are trying to do things within the existing policy parameters, not expanding eligibility, but to do a better job within those parameters. Can we get to 100%? Probably not, but if they could get to 15% uninsured they would be happy. Covering them in a preventative, proactive way through these programs is far better than having them go uninsured and using inappropriate high cost emergency room services.

Senator Bair said, if he understands it correctly, when a needy family comes in, first it is determined whether they qualify for Medicaid. If their income is a little bit too high to qualify for Medicaid, that's where SCHIP comes in, to cover all of the children's healthcare needs as long as that family is under the 185% of established levels. Is that correct? **Ms. Clements** replied that is exactly right. This is a program to address those families with slightly higher income than the Medicaid population. **Senator Bair** asked what would that income be? **Ms. Clements** replied that for a family of four, at 185% of poverty, would be approximately \$36,000. She will get a chart to the Committee. **Vice Chairman Broadsword** asked if there is a copay, and if so, what is it? **Ms. Clements** replied for 133% - 150% of poverty level they pay a monthly fee of \$10 per covered child. If they are from 150% - 185% of poverty level they pay a monthly fee of \$15 per covered child.

Senator Werk asked about when Ms. Clements talked about the number of qualified children not in the program, she indicated that the Federal partners would like us to look into it. Is the implication that Idaho is somehow not within the normal range of qualified children not in the program? **Ms. Clements** replied that she wasn't talking about the Federal government being concerned about Idaho. They sent a policy memorandum last summer to all states that were asking to expand their eligibility above 250%. They said they aren't going to let any state expand over 250% of the Federal poverty level until they can ensure that 95% of those currently eligible that are uninsured are enrolled in the program. **Senator Werk** said the obvious question has to do with outreach for the program. At one point the Department of Health and Welfare was asked not to have any outreach on CHIP. Where does the Department stand today in terms of doing outreach to try to gather in the folks who aren't covered? **Ms. Clements** replied that it wasn't outreach specifically that

the Department was directed to stop, it was mass media. They didn't want the Department running commercials encouraging people to apply for coverage. They backed off a little from that, and the current approach is that every year they do outreach. They do a back to school effort, work with the Healthy Connections providers, and work with Community Health Centers. This last year they had conversations about how to do a better job with this. The Division of Welfare wants to make the application process much easier with online applications. Also, the Department runs Women, Infants and Children (WIC), a nutritional program, whose poverty level is 185%. So, they are working internally with WIC to see the data matches - how many of those WIC kids are on Medicaid or CHIP? If they're not and are uninsured, they will target those children. So even without doing outreach, if they work internally they will be doing a good job.

Senator Darrington asked about the adult portion of the program. Apparently that program is just an insurance supplemental program involving less than 300 adults. It is up 185% of poverty, yet it only involves a few people, and it is the one that will be discontinued by the Federal government. Then the question will be do we pick it up or drop it? Is that correct? **Ms. Clements** replied that this is frustrating to her because, although she can understand that the Children's Health Program is supposed to be for children, the way it is structured in Idaho is really not about giving those adults access to our direct coverage, it is giving them access to health insurance at a very minor cost. She believes the approach is right on, but there is a high likelihood that if they include adults in the waiver renewal to keep this program going, it will only be approved if the adult section is dropped. That could mean that the Department comes back to the State to find another alternative to cover the adults, or they could just drop it. **Senator Darrington** asked if the children's dental portion of CHIP requires a waiver or is it part of the regular program? **Ms. Clements** answered that it is part of the regular program.

ADJOURNMENT **Vice Chairman Broadsword** thanked Ms. Clements for coming and adjourned the meeting at 3:48 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** January 30, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Bair, Hammond, Werk, and Kelly
- MEMBERS ABSENT/ EXCUSED:** Senator Coiner
- GUESTS:** See attached sign in sheet.
- CONVENED:** **Chairman Lodge** called the meeting to order. **Chairman Lodge** introduced today's guest speaker, **Larry Callicutt**, Director of Idaho Department of Juvenile Corrections (IDJC), and **Dr. Ryan Hurlburt**, Clinical Services Administrator.
- MINUTES:** **Mr. Callicutt** presented information about the Idaho Department of Juvenile Corrections objectives and trends and programs.
- Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].
- Vice Chairman Broadsword** asked if 90% of the kids go back to the same environment, how many of those environments are unsavory? How many are kids that have good home lives and how many are going back to something that will make the situation worse? **Mr. Callicutt** answered that he doesn't know of a percentage that ties the whole package together. About 40% of the homes they send kids back to are in poverty level according to Federal guidelines. That in itself is a concern. Around 30% or more of the youth that come into custody have been abused according to Department of Health and Welfare figures in that same environment. There is no question that there have been youth in custody that they have specifically held on to until they have been 18 years of age - typically not a very long period of time, maybe just a few additional months - to bridge that gap so they could go into an independent living environment rather than return to the same environment they came out of.
- Vice Chairman Broadsword** asked if there is any method in place to track kids who have been in your custody through the system if they end up in the Department of Corrections (DOC)? **Mr. Callicutt** replied there absolutely is. They collect data from DOC of those who have left IDJC's custody. Some kids go to other states, so they aren't tracked, but those who end up in DOC are tracked. The last figure he saw on that was 18% of IDJC's population are now in DOC.

Senator Hammond said it makes sense that if those kids go back into the same environment that they re-offend, and this problem isn't common to only Idaho. Are there any ideas out there of ways to build the self confidence in kids and to get them connected with different kids? It's part of your re-integration. Is there any discussion about creating new connections for them so their probability for recidivism is diminished? **Mr. Callicutt** stated that there is a lot of research around mentoring - finding pro-social role models, sponsors for Alcoholics Anonymous and Narcotics Anonymous, and the faith-based initiative. IDJC is trying to get more faith-based volunteers to come in and meet the kids, establish relationships and help them connect back into the community. The key is relationships and sustainability. The youths who have skill sets, especially those who are old enough to be independent, to separate themselves from those negative environments do better. Relationships are key, and employment opportunities are needed, both of which give them a better quality of life.

Chairman Lodge asked about those who have been associated with gangs before and then go back into the same gang-infested areas. Do you have any idea of the percentage of those who have been in IDJC custody who might be successful in keeping away from that gang influence? **Mr. Callicutt** answered that he doesn't have the specific figure, but they can certainly crunch those numbers with the data they have. He knows that it is a rarity, because there are only two ways to get out of a gang - either they will be killed or they must leave the area. The greatest success is in leaving, getting as far away from that gang as they can because it is cultural and multi-generational. In essence, you're telling these youths that they have to stay away from their family. That family, many times, is stronger than any governmental agency or treatment program. It is a huge issue. Many gang members have told Mr. Callicutt in the privacy of his office that they are scared going back because, no matter how well they did in the programs, they are going right back into the gangs where they have to do what they're told to do. **Chairman Lodge** said that the challenge then is to find places for them to go rather than going home. Can they go to Job Corps? **Mr. Callicutt** said they can go to Job Corps and there are currently two or three from IDJC in Job Corps.

Senator Bair asked what the Petition line in the Juvenile Justice Data Points chart means? **Mr. Callicutt** answered that Petition is a formal process filed with the prosecutor by a law enforcement officer or a school board member when a youth has behaved inappropriately because they want that youth to be held accountable. For instance, law enforcement officers can use discretion - they may have taken a juvenile into custody, but a decision was made to do a "street adjustment." They take him to the station and call the parent to release him into their custody. Going by Petition means that they need to go before the court to be held accountable.

Dr. Hurlburt, shared how his department is working with the Health and Welfare Department and other departments and shared some success stories of helping youth through mentors.

Chairman Lodge asked, regarding his report about the eight kids who

were likely to be committed to his department but instead received services in the community, that he give the Committee an idea of the cost savings of that. **Dr. Hurlburt** replied it is approximately \$60,000 per year per juvenile served. So, for a typical stay of 18 months it would save \$90,000 per juvenile. That is in addition to avoiding the stigma associated with commitment.

Chairman Lodge asked, regarding the Support Team Game that Dr. Hurlburt developed to use for life training, how the game will be marketed? **Dr. Hurlburt** said it is not for profit and is for use in agencies, schools, etc.

Senator Bair asked about the reintegration slide, what percentage of families are interested in counseling? **Dr. Hurlburt** said that currently there are 19 families in Functional Family Therapy, there are approximately 10 who have been released but still have a family therapist come to their home. There are also about 25 families of the 410 who are receiving reintegration specialist services. He said he can't answer the question about how many are interested. **Senator Bair** asked if Dr. Hurlburt thinks they will be able to get half the families involved at some point in the future? **Dr. Hurlburt** replied that he believes they are interested. In his experience many of these families feel hopeless, and condemned, judged and criticized. If they can somehow break through that barrier and get them to realize that the IDJC is there to help, he feels it will open their willingness much more. The Idaho Federation of Family have Family Support Specialists who are women who have had kids in the system before. They now reach out to families to help them negotiate the system and to open their minds to the possibility that help is out there.

Vice Chairman Broadsword said she appreciated Dr. Hurlburt's hard work and dedication in taking his idea from thought to physical action and suggested he take his Support Team Game to alternative high schools as an appropriate location for the game to circulate.

Chairman Lodge said she appreciates Dr. Hurlburt's gentle approach and wisdom. She thanked both Mr. Callicutt and Dr. Hurlburt for sharing with the Committee. **Chairman Lodge** then introduced **Dieuwke Spencer**, Chief of the Bureau of Clinical and Preventive Services in the Division of Health with the Department of Health and Welfare.

Ms. Spencer shared information about Idaho's Immunization Program.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Vice Chairman Broadsword asked if Ms. Spencer has a theory on why people aren't complying with the current recommendation for immunizations? **Ms. Spencer** replied that they aren't all required for admission to schools, so they only get the required immunizations for their children.

Senator Kelly asked for further explanation of the Idaho Immunization Coverage Levels chart, because Ms. Spencer stated that Idaho is not in

the confidence level - that sounds like an alarm. **Ms. Spencer** explained that the red line in the chart shows current recommended immunizations. Idaho is at 68.8% of children have the full recommended set of immunizations. The National average is 77%, so Idaho is statistically below the National average. **Senator Kelly** asked is this level mandated by State law? **Ms. Spencer** replied that it is not mandated by law. Child care in our schools' Immunization Rules do not include all of the Advisory Committee on Immunization Practices' (ACIP) recommended vaccines. She referenced the blue sheet in her handout that explains what those vaccines are. **Senator Kelly** asked if the blue or green line shows the required vaccinations? **Ms. Spencer** answered that the blue line contains all the required vaccines.

Senator Darrington said that we need hit 90% to be fully immunized. Is that correct? **Ms. Spencer** said that is true. **Senator Darrington** said that we are a lower state in the Union because of a weak immunization law which, politically, we cannot strengthen. That is why we are still as far below the National average as we are. Is that correct? **Ms. Spencer** said that may be a part of it, but she believes that with a public campaign and partnerships we can impact our rate significantly. **Senator Darrington** said he agrees, but it is very difficult to approach that 90%.

Vice Chairman Broadword asked if local school boards can enforce stricter rules for their districts? **Ms. Spencer** said she isn't sure, but could find out.

Senator Darrington said his view is that they cannot exceed the exceptions that are specified in State law.

Chairman Lodge asked are there any statistics on kids who have gone through the whole series and their attendance at school as opposed to those who have only gone through part of the series? **Ms. Spencer** stated that there are not. They are making improvements in data collection all the time, so maybe in the future that will be available.

Vice Chairman Broadword asked if there are immunizations adults should get now? **Ms. Spencer** replied that there are vaccines that are recommended for adults. Influenza is one good example that adults should have yearly. Pertussis (whooping cough) is another very good example. Idaho has historically had a very high rate of pertussis. When babies get pertussis, most often the source of that infection can be traced right to the primary care giver. The adult may have a cough that is annoying to them, but it can kill an infant. So this is a great example of an immunization given to an adult that can have a huge impact on the most susceptible, which is the infants. Another example is Hepatitis B. If a child is born with Hepatitis B the likelihood of them developing liver cancer is very great, and they have a greater chance of being a lifelong carrier. Measles, Mumps & Rubella (MMR), women are still tested to make sure they have Rubella antibodies when they are pregnant to make sure that protects their child from blindness and other birth defects. So having a well immunized adult population is also very important. Tetanus is another immunization adults should have every ten years.

Senator Darrington shared that a spokesperson from the Bureau was on

cable yesterday morning in the usual spot taken by Tom, advising adults to check with their physician and get their immunization schedule updated - the same information that Ms. Spencer just shared. The spokesperson was concise, to the point, and just excellent. **Ms. Spencer** said she will pass Senator Darrington's comments on.

Senator Hammond asked if the Committee could get the list of adult vaccinations that Ms. Spencer is suggesting adults check into? **Ms. Spencer** said she will get that to Secretary Joy Dombrowski.

Chairman Lodge thanked Ms. Spencer for sharing this important information.

MOTION **Vice Chairman Broadword** moved to approve the minutes of January 24, 2008. **Senator Hammond** seconded the motion. The motion was carried by **voice vote**.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:25 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 31, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senator Werk

GUESTS: See attached sign in sheet.

CONVENED: **Chairman Lodge** called the meeting to order and introduced guest speakers Leslie Clements, Administrator of the Division of Medicaid, and Kathleen Allen, Administrator of the Division of Behavioral Health.

MINUTES: **Ms. Clements** presented information about the Medicaid Mental Health Benefits including an overview of coverage, service delivery and utilization.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Senator Bair said Ms. Clements had testified before the Finance Committee about the 2008 projections, and asked where she thinks that total cost will be for 2008? **Ms. Clements** said she thinks they are seeing it increase slightly again, with six months worth of data. That is based on a number of factors: the size of their case load, the number of users, pricing and utilization.

Vice Chairman Broadsword asked about the Mental Health Costs by Benefit chart. Does the general hospital inpatient include when an acute bed is needed and the patient is put in the general hospital? Are all those costs included? **Ms. Clements** said that is correct for Medicaid patients.

Senator Hammond and **Senator Coiner** asked what each Region included? **Ms. Clements** answered that Region 1 is Coeur d'Alene North, Region 2 is the Lewiston area, Region 3 includes Caldwell and Nampa, Region 4 is Boise, Region 5 is Twin Falls, Region 6 is Pocatello and Region 7 is Idaho Falls. **Senator Coiner** asked if in the future the names of the regions can be included on these charts? **Ms. Clements** said that would be done in the future. **Chairman Lodge** asked if Ms. Clements can give the Committee any idea why Region 7 is so much higher? She said she is concerned about the number of children that are being treated in Region 7 as opposed to some of the more populated areas. **Ms. Clements** said she can speculate on some of the reasons. One is related

directly to access. If there are a lot of providers in an area, they will be generating a lot of services. That can be a good thing if its appropriate, but it might not always be. That is the Department's job to make sure that those services that are being delivered are really appropriate and have some positive outcome. The other comment that she has heard is that possibly that Region is doing a better job than other areas of the state. If they provide community based services, are they keeping individuals out of the hospital at a better rate than other areas? This data doesn't support that very strongly because some of the other areas seem to have as low a rate of hospitalization as Region 7. Also, Region 7 historically has been out in front of the rest of the state in the beginning and startup of these benefits and it has just grown at a more rapid pace.

Vice Chairman Broadsword noted that the number of providers according to the slide labeled Regional Population & Mental Health (MH) Utilization Percentages, isn't all that different from Region 1 to Region 7. Are they charging the same amount from Region 1 to Region 7 or is what the providers are charging making the difference? **Ms. Clements** replied that Medicaid's rate is the same regardless of where it is provided in the state.

Chairman Lodge asked why Region 3 is so much less in the Payments Per Participant Cost by Region chart even though Region 3 is a pretty populated area? **Ms. Clements** replied it is a pretty populated area, and it also has the greatest percentage of Medicaid eligibles in the state. So it is interesting that it wouldn't be more aligned with the percentage of mental health users.

Senator Coiner said that triggers another question when talking about populations and looking at Regions. Are these Regions of equal populations or are they of equal geographic areas and the populations vary greatly within them? **Ms. Clements** said the populations are very different and referred to the chart labeled Regional Population & MH Utilization Percentages. The population disparities among the state vary in terms of the total population - from a low in Region 2 of just under 7% of the population in that area, to a high in Region 4 of almost 28%. You would think that they might be aligned. The poverty statistics are a little higher in rural areas, so some of these Regions which have more proportion in rural areas you would think that the percentage of Medicaid would be higher. **Senator Coiner** said if he is reading the chart correctly, Region 4 with twice the population, basically has half the payments of Region 7. If we do it on population basis, Region 7 is four times as great as Region 4. **Ms. Clements** said that is what they are seeing. **Senator Coiner** said that is a real trigger to him and alarm bells are going off. What is going on? He would like to see a chart based on the population base. Why is that so far out of line with the others? **Ms. Clements** said that is what the Department is trying to better understand. From their perspective, they want to make sure that the Medicaid payments are made appropriately. If Region 7 is identifying and assessing individuals for mental illness and treating them all according to Department policies and doing the right thing, the Department is fine with that. That is where they use utilization management, credentialing to ensure that those things are all lined up. But the Department is not okay if they find that providers

aren't truly making accurate assessments or if there are some competency issues there. Historically, a couple of years back, it was far too easy to become a mental health provider in the Medicaid Program and they really didn't have monitoring at the time, so there was no followup to see that they were providing the services they were being paid to provide. **Senator Coiner** said that it seems that if at the end of four years we don't have a better handle on it, what are we going to do to get a better handle on it in the future? Then, if there is a true need and this particular Region has this much of a problem, where are we looking to get into the preventative of the causes of this? Are we looking at the causation of this if this is a valid number? **Ms. Clements** said she thinks the following slides will tell what the Department has done and where they intend to go. She stated she has a fair amount of confidence that the data is accurate in terms of what the actual payment experience is. Now they have to get to the point of making sure that they've validated that those payments they've made were really appropriately paid to agencies that delivered appropriate mental health services.

Senator Darrington stated he had developed the same question as Senator Coiner. His impression is that both Medicaid and non-Medicaid mental health services are accessed to a larger extent in Region 7 than anywhere else in the State. He assumes that, in addition to the provider problem you just identified, it will include greater outreach by people outside of the Department, perhaps a greater activism on the part of some of the mental health community or others who are interested. He said he won't address that in a question because he assumes Ms. Clements and Ms. Allen will address it further in their presentations.

Chairman Lodge asked if Ms. Clements' reference to the Department's plan to examine evidenced-based practices regarding services to children 0-5 years old and assess value was related to the newspaper article about teaching manners to children? **Ms. Clements** said she believes they have a number of things happening in programs that are non-covered Medicaid services. If it is an educational program, that is for the Department of Education to address, not the Medicaid program. If it is a vocational need, that is an employment area, not the Medicaid program. She thinks what they'll find is a number of services that are provided that may be necessary and may be needed, but really shouldn't be under the Medicaid benefit.

Senator Coiner asked for a chart Regionally of trends over the last five or six years to help identify reasons for Region 7's spike. **Ms. Clements** said that in terms of what has happened in the past, you will see the trend of Region 7's spike. It has been known. Up until this year they have had one mental health policy staff in the Medicaid Program responsible for working policies and coordinating with other divisions. Last year they reallocated and now they have three staff dedicated to that area. With the transfer of Behavioral Health staff into the Medicaid Program they are adding 15 people. That is significant and is an alignment. **Senator Coiner** said it doesn't seem to him that 15 people are needed to go out and figure out what is going on as a differential between the Regions, and it shouldn't take four years to come to some sort of conclusion of what is happening. **Ms. Clements** said Senator Coiner is correct, it won't take 15 people to

answer your question, it will take 15 people to go out and monitor, manage, and stay on top of the credentialing and the utilization management work the Department wants to have done. That's where those staff resources go. In terms of his question about why, she will put some information together and talk to Senator Coiner outside of the Committee meeting.

Senator Darrington said in the days when Senator Ipsen was Chairman of this Committee, he discovered and made a point of the fact that we had certain service providers in the State of Idaho, particularly in Region 7, that had several different businesses in the same building where each of the members of the LLC were on the officer list of the other LLC's down the same hallway. They were doing assessment, they were providing the services of several of our provider provided services. Senator Darrington said he cannot remember whether that included Mental Health Services. He remembers steps were taken to curb that and feels that may have a role in some of the earlier questions.

Senator Hammond asked the difference between rehab and habilitation? **Ms. Clements** explained that rehab is supposed to achieve measurable progress. A provider is required to demonstrate continual progress to get it reauthorized, so as long as you are making progress toward regaining that skill or that function, that is considered rehab. Habilitation may be a skill you never had, and may be more about losing function, or not being able to stay on the same level. In some of the developmental disability areas, the developmental therapies that are being done are more habilitation. It isn't like they had the skill and something horrible happened, it is teaching.

Ms. Allen shared information regarding the Department of Health and Welfare's Mental Health Services Program.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Senator Hammond suggested the Department look at how this compares with the data we have on suicide rates. It would be interesting to see how they compare.

S1340 Relating to Medicaid.

Mond Warren, Bureau Chief of the Bureau of Audits and Investigations, presented Senate Bill 1340 and stated that this bill will give the Department the necessary statutory authority to investigate client eligibility fraud within their programs and work towards protecting their limited program dollars and resources.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

MOTION **Senator Hammond** moved to send S1340 to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**. **Senator Hammond** will

sponsor this bill on the floor.

S1341 Relating to Public Assistance Fraud.

Mr. Warren presented Senate Bill 1341. He stated this bill will give the Department the necessary statutory authority to help protect their limited program dollars and address fraud in all of their public assistance programs.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

MOTION **Senator Hammond** moved to send S1341 to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**. **Senator Hammond** will sponsor this bill on the floor.

S1342 Relating to Marriage.

James Aydelotte, Bureau Chief of the Bureau of Vital Records and Health Statistics in the Department of Health and Welfare, presented Senate Bill 1342. He stated that this bill will clarify the list of Idaho officials who can solemnize a marriage in *Idaho Code Section 32-303*.

Senator Darrington asked why the former Lieutenant Governor is exempted in the Statute? **Mr. Aydelotte** answered that the previous language just stated Lieutenant Governor, it did not specify former or current. Because no specification for former was made in the law, they've been interpreting that as current. That is one of the things they wanted to clarify, so that is why it was added. The list of people who can perform a marriage has slowly evolved over time. They haven't been the ones to add to the list, so he cannot speak to why former Lieutenant Governor was not added.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

MOTION **Senator Hammond** moved to send S1342 to the floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**. **Chairman Lodge** will sponsor this bill on the floor.

S1343 Relating to Child Support.

Kandee Yearsley, Child Support Bureau Chief for the Department of Health and Welfare, Division of Welfare, presented Senate Bill 1343. She explained that this bill will revise the definition of reasonable cost to mean the cost of health insurance is considered reasonable in cost if the cost to the obligated parent does not exceed 5% of his or her gross monthly income.

Chairman Lodge noted that in the fiscal impact statement, there is no impact to the Child Support Program, but there is an impact to Medicaid,

maybe close to \$1 million. **Ms. Yearsley** replied that number is a total off the wall figure. There is currently no method to determine whether children enrolled in private insurance would be eligible for Medicaid if their income was less than 5%, and whether that would create the environment for them to be eligible for Medicaid. This number is just a guess utilizing the number of children they have in the Child Support system. **Chairman Lodge** said her concern is whether this will impact the State budget for 2009. **Ms. Yearsley** answered that they are not asking for \$1 million from the budget. At this point they don't know if there would be any impact at all. What they are saying is there is a potential for an impact, but they truly don't know how many cases that will not have to get insurance. **Chairman Lodge** said she understands that, but is very concerned about the budget this year and doesn't want to see any more new programs or legislation come through this Committee that are going to impact the budget unless it is absolutely necessary.

Vice Chairman Broadword asked if this bill is not adopted so that the Department can get the necessary data, will the State receive a penalty from the Federal government because we don't have the information they will require of us? **Ms. Yearsley** stated it isn't really about whether or not we get the data because we are going to do that anyway, it's about whether we adopt a reasonable cost definition. That does put the State out of compliance if we don't adopt one by the end of this session and, therefore, we could have a penalty.

Senator Hammond asked whether Ms. Yearsley is talking about monthly or annual gross income? **Ms. Yearsley** said they look at monthly income. **Senator Hammond** said that the definition just says reasonable cost means the cost to the obligor does not exceed 5% of his or her gross income and it doesn't say monthly. Is that a problem? **Ms. Yearsley** said that some people get paid bi-weekly, some people get paid weekly. What the Department does is look at their pay as they get paid and take the monthly amount, because insurance is normally run on a monthly scale, so the insurance company insures you for a month.

Senator Darrington said it seems to him that this program may save more than it costs because although the 5% may be an arbitrary number, that 5% is still based on some reasonable expectation of what health insurance may cost somebody for this instance. On the other hand, it is going to divert kids out of the Idaho State Children's Health Insurance Program (SCHIP), the Indigent Program or other social services if they have partial or fairly good coverage. That is his interpretation of all this, and asked if he is correct? **Ms. Yearsley** stated he is correct. The Department's hope is that this bill will encourage people to keep their jobs and that more children will be enrolled in a health insurance program.

Senator Kelly asked about Ms. Yearsley's statement that kids may be covered by insurance but still be on medicaid. **Ms. Yearsley** said that is correct. The non-custodial parent could have the child on private health insurance but the custodial parent qualifies for medicaid. Therefore, it is like dual insurance with Medicaid being the secondary. **Senator Kelly** asked if they would have to use the private insurance first? **Ms. Yearsley** stated that is usually how it works.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

MOTION

Senator Coiner moved to send S1343 to the floor with a do pass recommendation. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**. **Senator Coiner** will sponsor this bill on the floor.

RS17697

Relating to Wholesale Drug Distribution.

Mark Johnston, Executive Director of the Board of Pharmacy, presented RS17697. He stated that this RS addresses two areas of concern with the Wholesale Drug Distribution Act. It would eliminate the bond requirement for wholesale drug distribution licensure and clarify when the designated representative would be required to submit a description of any lawsuits in which such businesses were named as a party. The original intent of the Act will not be affected and will help to keep counterfeit prescriptions out of our supply chain while allowing small businesses to do business in Idaho.

Senator Kelly asked isn't there a reason they had the bond in the Act in the first place? **Mr. Johnston** replied that the Act states it is "to secure payment of any fines or penalties imposed by the board and any fees and costs incurred by the board regarding that license." The intent was to collect fines for wrongdoing to collect fines. The largest fine the Board of Pharmacy is enabled to enact is a \$2000 fine and this is a \$100,000 bond. The Board of Pharmacy feels the ultimate penalty is to revoke licensure and the wholesale distributor would not be able to perform actions in the State anymore, so they don't feel they need a bond at all.

Vice Chairman Broadsword asked about the specific instance they discussed and asked him to elaborate on it. **Mr. Johnston** said it was a veterinarian product that is distributed by one wholesaler in the country and that wholesaler distributes just that one product. Based on the expense of obtaining this bond they decided not to distribute into the State. The Board of Pharmacy received phone calls from veterinarians who were concerned that they no longer had access to this medication. Also he has had several small distributors who have chosen not to distribute in this State because of this bond requirement.

Senator Kelly stated that number 7 in the RS refers to bonds. Shouldn't that section be deleted also? **Mr. Johnston** said that is a very good point.

Vice Chairman Broadsword said she would like **Chairman Lodge** to return this RS to the sponsor and they will have it corrected and returned to the Committee.

RS17727

Relating to Naturopathic Physicians.

Vice Chairman Broadsword presented RS17727. She explained that this legislation would repeal *Chapter 51, Title 54, Idaho Code* relating to the Naturopathic Physicians Licensing Act. It would also delete references to the Board of Naturopathic Medical Examiners in two other sections of Idaho Code. She asks that the Committee print this RS and the Chairman

hold it until such time that legislation comes forward to change it. If no legislation comes forward to change the law, she would like a hearing held.

MOTION **Senator Darrington** moved to print RS17727. **Senator Kelly** seconded the motion. The motion was carried by **voice vote**.

RS17726 Relating to Indigent Medical Services.

Tony Poinelli, Deputy Director of the Idaho Association of Counties, presented RS17726. He explained that the purpose of this bill is to clarify the handling of indigent reimbursements. It would allow for the portion of funds received that are to be reimbursed to the catastrophic (CAT) fund to be put into a trust and then sent to the CAT fund without being budgeted. Funds that would be distributed to the county indigent fund would be allowed to be utilized as long as they were budgeted as provided by law. This codifies the practice currently utilized by many counties.

MOTION **Senator Coiner** moved to print RS17726. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

MOTION **Senator Kelly** moved to accept the minutes of January 28, 2008. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

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

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 4, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign in sheet.

CONVENED: **Chairman Lodge** called the meeting to order.

MOTION **Senator Bair** moved to approve the minutes of January 29, 2008. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**.

MOTION **Senator Hammond** moved to approve the minutes of January 30, 2008 as corrected. **Vice Chairman Broadsword** seconded the motion. The motion carried by **voice vote**.

Chairman Lodge congratulated our Page, Kaitlyn Roberts, who is highlighted in the *Stat Sheet*, a publication for Canyon County.

RS17639C2 Relating to Ground Water

Jack Lyman, with the Idaho Mining Association, explained that this bill specifies how the Idaho Ground Water Quality Plan, adopted by the 1992 Legislature, should be implemented by the Department of Environmental Quality with regards to mining. It includes legislative findings and defines terms. It provides that naturally occurring substances won't be considered contamination in mining areas as long as the mining operation engages in the most effective and practical practices designed to achieve water quality goals and protect beneficial uses. It also requires that a mining operation protects ground water quality and meet ground water quality standards beyond the mining areas.

Senator Kelly asked if negotiated rulemaking has been done? **Mr. Lyman** responded that he contacted the Department of Environmental Quality (DEQ) with draft legislation about one year ago. Two years ago the DEQ ruled that one of the operations in Eastern Idaho was not in compliance with the State's ground water standards because it could not meet drinking water standards in the bottom of a back filled pit. Governor Risch got involved and the DEQ used its authority to create site-specific

standards to take care of that particular situation, but it was The Idaho Mining Association's (IMA) judgement that this was something that needed to be resolved. He was requested by the DEQ to engage in negotiated rulemaking to try and resolve IMA's concerns and to address those issues. The fundamental issue is do ground water standards apply in mined areas. He thinks the ground water plan is very explicit in saying they do not, but the DEQ took a contrary view. When they proposed a rule to the Board, he objected to that rule and the Board rejected that rule and requested that the parties continue those negotiations. It is his view that no progress can be made on the negotiations until they get legislative direction as to whether or not those drinking water standards need to be met in the mined areas. That is the purpose of this legislation. The key operative definition is on page 2 line 7 "Point of compliance means the vertical surface where the department determines compliance with ground water quality standards and shall not include any area that is, or was, a mineral extraction area." **Senator Kelly** asked if it is his intent that this apply to all existing, abandoned and former mining areas? **Mr. Lyman** responded that the issue came up in negotiations about applicability. It is not their intent to go back and address historic mines, but it is their intent that it would apply to existing operating mines or mines that are under some kind of responsibility to the DEQ through remediation of their engagement. Most of those have consent orders and this would not supercede that; in fact, the last paragraph makes sure that all existing consent orders remain in effect.

Senator Werk asked when we talk about ground water quality standards, because you've used the broad definition, we're talking about any ground water standard wouldn't apply in the mined area whether it was a standard that applied to that mining operation or not. Is that correct? **Mr. Lyman** said he isn't sure he understands the question. The State has adopted ground water rules that establish ground water standards. Those apply throughout the State. It is our intent that those standards be applied beyond the mining areas but that they not be applied in the mining areas. **Senator Werk** said he understands then, under what Mr. Lyman is proposing, there would be no requirement for a mine to do due diligence before beginning operation to understand background concentrations of compounds in the water before they started mining. For instance, ground water; if there was arsenic in the area that is naturally occurring. Mr. Lyman is saying they are absolved of everything so they never have a background standard in which they look at what their impacts are. **Mr. Lyman** answered that isn't the case at all. All of that still applies and all of those requirements still apply. This specifies that you only get relief from those naturally occurring constituents if you've engaged in the best management practices. The thrust of this is that they will do everything they can under the States rules and best management practices to protect that ground water. What they are talking about here are massive earth moving operations. It is unreasonable and generally impossible to meet those drinking water standards after they've done all of that. There are best management practices they can use to minimize the impact they have even in the mined areas, and they still have an obligation to protect it outside which is why they do the predevelopment monitoring and develop models to predict what's going to happen because that helps

guide the best management practices. It is not absolving them of those responsibilities. All it is saying is that they won't measure for the IMA's compliance in that mined area. **Senator Werk** asked if the background issue is naturally occurring arsenic in the water, for instance, but the mining operation uses fuel, and over the course of their operation they spill fuel that enters the ground water. Would they need to meet the drinking water standards for the compound that they added extra into the ground water that would never have been there in the absence of mining? **Mr. Lyman** said this would not absolve them of the need to meet those standards. This applies only to the naturally occurring constituents. Any kind of diesel or chemical spill would be separate and apart from this. The DEQ took the position during the negotiations in the rule they presented, that within eight years after the end of mining, the entire area would have to meet drinking water standards. That is just something that will not work in the mining operation in Idaho.

Senator Hammond asked if Mr. Lyman is saying it is impossible to meet that drinking water standard because of the fact that whether mining occurred or not there are naturally occurring elements in the water that can't be remediated? **Mr. Lyman** answered that isn't exactly the way the ground water standards work. What the State has adopted is a ground water standard that adopts a drinking water standard for those constituents. That is the State's standard unless the naturally occurring occurrence of one of those constituents exceeds that. Then the way the standard gets applied is a no net increase in that constituent. So there may be an elevated manganese level which would violate the drinking water standard, but that elevated level, which would be determined through the monitoring that Senator Werk talked about, would become the standard for that particular location. The standard then would be that you could have no impact on that whatsoever. The concern isn't that they can't meet them, and they may in fact meet them in many cases; it is that they can't have that expectation and that uncertainty in that mined area when there are people who want to invest \$50 or \$100 million and don't know whether or not they will be able to meet that standard in the bottom of a mining pit. What IMA is saying is they will do everything they can to protect ground water, but the compliance expectation will be outside of that. **Senator Hammond** said so, we're just talking about the water contained in that site, none of this water is leaving the site, is that correct? **Mr. Lyman** replied that ground water systems are very complex. It is water that is generally flowing through that site. Mining is unique in that it can occur in the ground water. When you engage in activities in the ground water, you can have fundamental chemical and geological changes that take place and there is nothing you can do to prevent those changes. What the IMA wants to do is use best management practices to make sure that the effect that they have doesn't leave that site and damage someone else's beneficial use. The ground water plan is very explicit that mining can cause localized contamination that will preclude other beneficial uses in that localized area. This bill will recognize, by moving that expectation of compliance beyond that mining area, but protect other ground water uses beyond that mining area, to make sure they aren't given a license to pollute beyond that mine site.

Senator Kelly said that it sounds like the DEQ has been conducting

rulemaking for the past 1 ½ years. She has no doubt that it has been conducted at great expense and commitment of resources on behalf of DEQ. It sounds like DEQ got through that rulemaking process and received comment, received all the input and got to the point where they were recommending a rule to the Board of Environmental Quality. It sounds like at this point you submitted testimony in opposition to the rule and the Board of Environmental Quality postponed its decision saying go back and see if you can work this out. It sounds like that process is still continuing, but you are coming to us with this in the middle of it. Is that description correct? **Mr. Lyman** answered that to a limited extent that characterization is correct. IMA's view has never changed and was consistent throughout the negotiations. This was not a negotiated rule where a consensus was reached, so IMA went to the Board and indicated that they disagreed with the rule that the DEQ proposed. It is his feeling that the Board agreed with the IMA. He offered four changes that became too complex to take into account at their last meeting before being able to submit a rule to the legislature. If they had approved the rule that was proposed, Mr. Lyman would be before this Committee asking the Committee to reject that rule. But he notified the Board at that time that IMA reserved the right to seek a legislative solution. The question becomes what does the Ground Water Act mean? Mr. Lyman doesn't believe that can be resolved through negotiation. The motion that was made by the Board of Environmental Quality said that they be instructed to continue negotiated rulemaking on the docket and that in negotiated rulemaking they further define affected groundwater area, mineral extraction area, and that the point of compliance be clarified and the applicability as to the date that DEQ uses be further investigated. Mr. Lyman believes that the only way to discern legislative intent is to have the legislature indicate its intent. That is what he is trying to do with this bill.

Senator Coiner said he is confused in that Mr. Lyman wants this to apply vertically underneath the mined area, and yet he just said the ground water systems are very complex and they move. If there was legislation that would allow a different water standard under the mine and that water body is mobile and is going all direction out away from that, how will you contain it and not affect the waters around the mine? **Mr. Lyman** answered that the ground water systems are very complex, as are the best management practices that can be used. Generally the kinds of things you would see are selective mining, the replacement of the materials in a selective way, or construction of caps to prevent infiltration of water into the area so that you dramatically reduce those elevated constituents that you find. We're talking about water that is going through rather porous rock, not an underground sea. Through attenuation you don't have contaminants (naturally occurring constituents only) migrating beyond those sites. That is what the modeling is for, to demonstrate that. It is very complex and very expensive. What IMA can't have, is the situation they had in the past, where DEQ goes in with the expectation that someone has dug a 500 foot deep hole, filled it back up, and that they can sink a well in the middle of that area and expect to drink that water. That will not happen, but IMA fully accepts the responsibility to make sure that the nearby neighbor's watering pond doesn't show up with

elevated levels of manganese.

MOTION: **Vice Chairman Broadsword** stated that this has been an interesting discussion and one that the Committee should continue at a full hearing. **Vice Chairman Broadsword** moved to print RS17639C2. The motion was seconded by **Senator Darrington**.

SUBSTITUTE MOTION: **Senator Kelly** made a substitute motion to return RS17639C2 to sponsor. **Senator Werk** seconded this motion. **Senator Kelly** explained that what the Committee is being asked to do is to intervene in an ongoing negotiated rulemaking process that the DEQ is going through. She stated she has real concerns if a party to those negotiations can circumvent that process by coming to the Committee to have them weigh in on the issue without having the testimony and the process that DEQ has gone through. Negotiated rulemaking by definition does not mean that everyone agrees to it, it means that DEQ, weighing the evidence and implementing their authority to protect public health and safety have determined an outcome is the appropriate one. What we have here is a party to those negotiations is trying to circumvent the process and she can't support that. **Senator McGee** said that generally when laws are passed in the State of Idaho, and it has been his experience as a member of the Senate Health and Welfare Committee, that when a bill is passed, rules are promulgated and there is ongoing discussion. Is that a correct assumption? **Chairman Lodge** replied that is true. **Senator Coiner** said that to the extent that this legislation then would create rules to work within that, if the rulemaking process is going on, and the Committee is coming in to short circuit the work that is being done, he has discomfort with that too. He will support the substitute motion until such time as the Committee can learn more about what has happened in the past, then maybe this can come back. **Senator Darrington** said that the request by the sponsor of this RS is that we have a full hearing within this Committee to answer the very concerns that were just raised by the Senators who favor the substitute motion. He suggests that it would be appropriate to do so, and get the answers and act on a bill. **Vice Chairman Broadsword** said that she doesn't think it is unheard of for this Committee to print a bill to bring an issue to the open to try to encourage State agencies to enter into negotiated rulemaking with a more earnest approach. She knows of at least one instance (not this one) where DEQ was "stalling the ball - guarding it good and not letting it out so you could make a goal at the end of the field." She believes the Committee should print this bill, have the hearing and see what they say when they come before us.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Chairman Lodge called for a vote on the substitute motion. **Senator Kelly** called for a roll call vote. **Chairman Lodge** nay, **Vice Chairman Broadsword** nay, **Senator Darrington** nay, **Senator McGee** nay, **Senator Coiner** aye, **Senator Bair** nay, **Senator Hammond** nay, **Senator Werk** aye, **Senator Kelly** aye. The substitute motion failed. **Chairman Lodge** called for a vote on the motion to print. The motion carried by **voice vote**. **Senator Coiner**, **Senator Werk**, and **Senator**

Kelly voted nay. **Senator Hammond** shared that he is not sure he supports this RS but he does want to hear more about it and better understand it.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

RS17631

Relating to Daycare Programs.

Senator Corder explained that this legislation amends *Title 39, Chapter 11 of Idaho Code* to revise and extend the State's licensing requirements for child care providers. The current code provides for minimum health and safety standards for daycare centers with thirteen or more children, but does not provide any regulation for those providing care for six or fewer children, and very minimal regulation for those providing care for seven to twelve children. This legislation would extend licensing to all providers who receive compensation and care for four or more children, with current exceptions maintained. Basic requirements would include criminal history background checks, health and safety inspections, fire inspections, restrictions on alcohol and tobacco use, firearms safety, and infant CPR and first aid training. It established new staff-child ratios for day care and mixed age groups, and brings current code into consistency with existing administrative practices and rules. The fiscal impact for additional licensing by the Department of Health and Welfare is \$44,750, and of that \$38,900 is from the general fund.

Senator Darrington stated, regarding the four pages of names of children who have suffered abuse of some type in a daycare setting used as an example by Senator Corder, he assumes they all occurred in either group daycare homes, family daycare homes or licensed daycare centers. Is that correct? **Senator Corder** stated that is correct. **Senator Darrington** asked if there are more throughout the State of Idaho because Senator Corder's example was from only three districts? **Senator Corder** said that is correct. **Senator Darrington** asked how are they categorized in general? **Senator Corder** answered that some of the categories are child battery, inappropriate touching, drugs and alcohol, intoxication, unsafe practices, unsanitary conditions, lack of supervision, and discipline issues. **Senator Darrington** said most of his examples are criminal acts. Is that correct? **Senator Corder** answered that part of them are. **Senator Darrington** asked if those that are not would be criminal acts under Senator Corder's proposed legislation? Does this legislation criminalize additional things that are not criminal under the criminal code? **Senator Corder** answered that nothing new would be criminalized. **Senator Darrington** asked if he would be willing to furnish to this Committee a complete list of prosecutions for sex abuse and other criminal acts broken down by daycare homes, group daycare homes, and daycare centers that are licensed? **Senator Corder** said he would certainly be willing to furnish everything he could find on that. **Senator Darrington** said the Committee will expect that when they have the hearing. He won't vote no on print, but he definitely wants to know that there is some evidence that we have a higher percentage of abuse cases which are criminal acts in the unlicensed family daycare centers and the

medium category of group daycare facilities compared to licensed daycare. That is only fair to ask. **Senator Corder** responded that he will be happy to get all the information he can, but he wanted to point out that there is a difference between causing more things to be criminal than just bringing an awareness. This licensure will prevent certain people from having daycare facilities. It will prevent certain people from being in those facilities. So they will get a list of those things that have existed and more scrutiny what we will find is not more things that are criminalized, but there will be more acts that are made known. There may be more prosecutions, not because we make more things criminal, but simply because we are now more aware of the offenses that have been done.

Senator Hammond said he intends to vote to print but is interested in the fiscal note because he is not sure we can do the continued health inspections and the inspections to ensure they are following health standards for the same kind of money talked about in the fiscal note with this RS. If that's so, that is great. He just wants to make sure, if we are passing a law to ensure a certain standard, that we have the resources necessary to actually ensure by inspections that the standard is met.

Senator Corder stated that number comes to us from the Department of Health and Welfare after their analysis. **Chairman Lodge** asked if that includes the fire department inspections as well? **Senator Corder** said he was not sure about that. **Senator Hammond** said he doubts that it does because fire inspections are already required under law. **Vice Chairman Broadsword** asked is there a fee for licensure under this bill? **Senator Corder** said that it increases the fee from \$100 to \$150 for the initial license. **Vice Chairman Broadsword** stated that fee will help to defray some of the costs that are being discussed? **Senator Corder** replied that is the intent.

MOTION

Senator Coiner moved to send RS17631 to print. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3 and 4].

RS17697C1

Relating to Wholesale Drugs.

Mark Johnston, Executive Director of the Board of Pharmacy, explained that the legislature passed the Wholesale Drug Distribution Act in the 2007 session. During its implementation, the Board of Pharmacy discovered two areas of concern. This bill addresses those concerns. It would eliminate the bond requirement for wholesale drug distribution licensure and clarify when the designated representative would be required to submit a description of any lawsuits in which such business, which employed the designated representative over the past 7 years, were named as a party. Due to the existing bond requirement, smaller wholesalers have elected not to seek licensure in Idaho, eliminating the availability of certain products and potentially raising wholesale costs of other drugs. Clarification that only lawsuits in which the designated representative was named as a party or testified, eliminates the submission of thousands of pages of irrelevant materials. The original

intent of the Act will not be affected and will help to keep counterfeit prescriptions out of our supply chain while allowing small businesses to do business in Idaho.

Vice Chairman Broadsword stated that this is the exact same RS that was presented the other day but, as Senator Kelly noted, there was an additional mention of a bond. That was stuck as well. There were some little kinks that we didn't realize would be unintended consequences when we passed the bill last year, and this RS addresses those.

MOTION

Senator McGee moved to print RS17697C1. **Senator Bair** seconded the motion. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

H361

Relating to the Board of Social Work Examiners.

Tana Cory, Chief of the Bureau of Occupational Licensing, explained that this bill will allow the Board to establish a provision in the rule for inactive license status to enable those not actively practicing in Idaho to retain their license.

Vice Chairman Broadsword said she has a concern about the Statement of Purpose. It doesn't specify which Board it is talking about. It should state what it is so that folks reading the Statement of Purpose on the legislative page know what they are reading about. She stated she doesn't know what the proper procedure is for making this change since it has already been through the House and has been approved there.

Senator Darrington said the Statement of Purpose isn't part of the bill, so it is possible to send this to the floor with a corrected Statement of Purpose that would say "the bill will allow the Board of Social Work Examiners to establish a provision in the rule" that is all that is needed.

MOTION

Senator Darrington moved to make these corrections in the Statement of Purpose and send H361 to the floor with a do pass recommendation.

Senator Hammond seconded that motion. The motion carried by **voice vote**. **Senator Werk** will sponsor this bill on the floor.

H362

Relating to the State Board of Podiatry.

Ms. Cory explained that this bill will change the compensation for board members to remove them from PERSI. Their contributions are very small and it has a detrimental effect of their tax situation. There is no fiscal impact on the General Fund and very little impact on dedicated funds.

Senator McGee asked if this is standard practice to do this, or are we just making a change for one person? Can you give the Committee some background if this is standard on other boards and commissions that we have? **Ms. Cory** deferred to **Alan Winkle** from PERSI, to offer some insight into this. **Mr. Winkle** answered that this is standard practice if the Board so desires to withdraw from PERSI so they won't have implications on their IRA contributions. Of the Boards and Commissions at the State level, approximately half of them are out of PERSI and they change from

time to time. **Senator Coiner** asked if once they opt out, that opts out for all current and future Board members on that Board, is that correct? **Mr. Winkle** said that is correct. All Board members must be out until, I suppose at some point in the future, they could submit to the legislature to put them back in again. **Senator Coiner** asked if this is because of Federal law in relationship to the PERSI plan? **Mr. Winkle** said the personal IRA, if you're also a member of an IRS qualified plan, there are income limits on what you can put into your personal IRA that are specified by the IRS. If you exceed that you can still put contributions in, but you don't get the tax deduction for them. This individual has a higher income and is losing some of those tax deductions for contributions to a personal IRA and the Board seemed to agree. That is typical of this situation. **Senator Kelly** asked how often do they meet and why would we provide retirement benefits for these board members anyway. **Mr. Winkle** stated that this was a way back when thing. The law was written to provide a minimum benefit for people that are below a certain threshold. That includes board members, at the time it included legislators, planning and zoning boards, and city councils. As far as PERSI is concerned it is not that big of an issue because they draw a very small benefit. **Senator Kelly** asked do they get healthcare benefits too? **Ms. Cory** stated that they do not. In answer to Senator Kelly's previous question, they meet twice a year. **Senator Hammond** said he has always felt the reception of PERSI benefits for two meetings a year was a little silly anyway. Hopefully there will be an attempt to clean a lot of this up so that they can get all of these boards out of PERSI.

MOTION

Senator Hammond moved to change the Statement of Purpose from "board" to "State Board of Podiatry" and to send H362 to the floor with a do pass recommendation. **Senator McGee** seconded the motion. **Senator Darrington** said it seems to him that if a board member enrolled in PERSI, then is no longer on the board and at some point in the future is offered State employment full time, at least the advantage to the board member was that it would count as years of service. That is the only thing that worries him, because that is an advantage of working on the board. Is that correct, Mr. Winkle? **Mr. Winkle** replied it depends on the case, but it could. **Senator Hammond** said that same point is part of his concern, because 20 years on a board that meets twice a year, and then they're given credit for 20 years. If they do something else for 10 years, it's a pretty expensive endeavor for the State system.

The motion carried by **voice vote**. **Senator Hammond** will sponsor this bill on the floor.

Senator Coiner requested that the Committee get more information on the Mental Health issue in Region 7 presented in the January 31, 2008 Health and Welfare Committee meeting. **Chairman Lodge** said Leslie Clements and Patty Campbell met with her on Friday and she asked them specific questions about this. They are willing to come back and give us a report. They are just beginning to track. **Senator Coiner** said his question is why are they just beginning? Anytime he sees spikes in statistics that tells him something is wrong. **Senator Darrington** said he had his first call on the \$25 fee for the non-custodial parent and it was pretty hostile.

He is thinking of talking to Child Support about writing it in to the Child Support law that at the time of the Child Support order by the judge, that he issue a determination as to who pays the \$25 fee. It is impossible for the legislature to develop the guideline. By having it done through the court, it spares the legislature the heat. He asked the Committee to think this over. **Chairman Lodge** said she also received two calls on this issue.

ADJOURNMENT The meeting was adjourned at 4:15 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 6, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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 3:02 p.m..

BILLS:

S1363 Relating to Indigent Medical Services

Duane Smith, County Clerk, Idaho Association of Counties, explained that the purpose of this bill is to clarify the handling of indigent reimbursements. It would allow for the portion of funds received that are to be reimbursed to the catastrophic (CAT) fund to be put into a trust and then sent to the CAT fund without being budgeted. Funds that would be distributed to the county indigent fund would be allowed to be utilized as long as they were budgeted as provided by law. This codifies the practice currently utilized by many counties.

The indigent law was amended in 1996 to specify that an application may be filed on an indigent person within 30 days of receiving necessary medical services. *Idaho Code, Section 31-3506 (2) (a)* dealing with obligated county has some inconsistencies in that one section deals with "preceding application" and another section uses the terminology "preceding incurrence." Any delay in the filing of an Application for County Aid should not determine which county would be the "obligated county." This would clarify that statute by eliminating the conflicting terminology. There would be no impact on the state general fund or any taxing districts.

Chairman Lodge asked if the fund designated for the CAT fund is an interest bearing account? Also, are the funds sent to the State once a year? **Mr. Smith** stated that it is not an interest bearing account. They send the money to the State every three months.

Senator Darrington asked of the money received, which is assigned to the State Catastrophic Healthcare Fund and which is not? **Mr. Smith** shared an example where the county's share of an initial payment was \$10,000, and the CAT fund was \$90,000, if that person is repaying at \$100 per month, \$10 would be put in the indigent fund and \$90 would go to the CAT trust fund.

Vice Chairman Broadsword said it states in the Statement of Purpose that many counties currently use this practice. How many counties are currently using this practice? **Mr. Smith** stated that he doesn't have an accurate count, but it was a good share of them. Maybe 25%.

Senator Werk said he needs to be clear on what the Association is trying to do. Subsection 7 under 31-3510A is meant to delineate the fact that you have two pools of money, the CAT fund money (which goes away when sent to the State) and the pool of money that the counties are dealing with. If that is the case, why is it necessary to eliminate the original language in this subsection put in by those who originally did this Statute, when it sounds like you want to follow that piece of Statutory language? **Mr. Smith** answered that the reimbursements they receive are one pool that have to be split between the county and State, just in those cases that have gone over \$10,000. The way it is written, and that is the only way new clerks know to do it, they will put all the money in the indigent fund. Then periodically when they send the CAT fund's share, if they had not planned on spending that amount, they will overspend their budget. So what is technically okay with the Code isn't okay with accounting standards. There are two ways to deal with that - either by Resolution or by opening the budget. Rewording this makes it clear that they can take the CAT fund share of the money which is really just pass-through money and not put it into the indigent fund. **Senator Werk** said when a chunk of money comes in that the county is, in essence, not going to keep, that money is just an off the books transaction. The monies that you keep in your county indigent fund goes through a budgeting process. How does this impact how you need to budget, reconcile and spend for that portion of the money you're keeping? **Mr. Smith** stated that when they set up the budget they estimate how much money they will receive in reimbursements that they can then use to pay off expenses, just like any other fund. The portion that will go to the CAT fund isn't budgeted for, but it is a part of the budget just like the indigent fund, it's just a separate fund. Now, when you look at revenue in the indigent fund you really wouldn't know how much of that is the CAT fund share. They have a separate accounting system that keeps track by case; one case can be 90%, one case can be 15%, and very seldom do they get lump sum reimbursements.

Chairman Lodge said so you don't really get a chunk of money in, you're getting maybe \$100, or \$50, or \$10, that you're splitting up, so you keep the 10% in the fund for the county and put the other that you send on to the State in the CAT fund. **Mr. Smith** answered that is the best way for it to work.

Senator Werk said, because he isn't really clear, he is thinking in terms of Ada County because when they looked at CAT fund numbers, they are big numbers, 100,000's of dollars, is in the county portion. So he is trying to get it straight. He understands that 90% of those funds are supposed to go someplace else and they don't really hit the budget. What he has a problem understanding is that if \$100,000 comes in, how this RS impacts the budgeting of that money coming in to make sure we're not eliminating some safeguard that needs to be there, so that it is transparent to the people of the county to understand where this money comes from and

goes to. **Chairman Lodge** asked Mr. Smith how do they account for that money? **Mr. Smith** said it is accounted for in two separate systems. First is the indigent program, kept case by case of all activity in and out. Then there is the record keeping account for in the budget indigent fund. Occasionally they have a lump sum reimbursement. During the year, as they set up the budget, they will show as an expense a line item for CAT fund reimbursement to show that money. When it all goes into the indigent fund, they would have to make that payment to the CAT fund and this distorts the picture.

Tony Poinelli, Idaho Association of Counties, explained that current budget process is if a person pays \$100, that \$100 goes into the indigent fund. Prior to that budget process being done, the county has to try to estimate that they're going to receive that \$100 in reimbursements. They may or may not be accurate in their estimate. If they are over, they must reopen the budget to spend anything over what the budget process is. What this RS is trying to do, is basically say that if the county is intended to get, lets say 40% or \$40 of the \$100 that is received. Then \$60 goes to the CAT fund. So \$40 goes to the indigent fund which is already budgeted for - it was planned when the counties get their budget. The other \$60 would basically go into a trust where it is a pass through. Now all funds, whether it is a trust or not, are still audited by an outside auditor. That is part of the entire process. It goes through the process per se because it is audited, but the thing the counties don't have to do is estimate that they are going to receive all this additional money that goes to the CAT fund because they can't. Maybe an individual gets a check that's worth \$100,000 and they pay the county \$60,000 as their medical bill. But the county only budgeted for \$20,000. In the 60%/40% split, 60% of that money would have to go to the CAT fund. They will have to reopen their budget and publish their budget in order to spend that new money. Spending it is cutting it to the State of Idaho.

Senator Bair said that whenever there is a bill that comes in that is indigent the county pays the first \$10,000. If the bill is for \$20,000 it would be a 50/50 split when any reimbursements came back into the county, half would go to the State and half would stay with the county. **Mr. Poinelli** said that is correct. Basically when an indigent claim is done, the percentage is determined on the amount that the county pays and the State pays. So whatever that percentage is.

Vice Chairman Broadword said, so what you are saying is that this simplifies the budgeting process for the counties. It doesn't change anything about the way its done, it just makes it easier so you don't have to reopen your budget on a continuing basis. Is that correct? **Mr. Poinelli** said that is correct.

MOTION

Senator McGee moved to send S1363 to the Senate floor with a do pass recommendation. **Senator Hammond** seconded the motion. The motion carried by **voice vote**. **Senator McGee** will sponsor this bill.

RULES:

RS17813

Michael Kane, Representative for Southwest Health Department, explained that the purpose of this bill is to clarify that Public Health Districts are not political subdivisions of the State similar to counties or cities, but are independent public bodies similar to special purpose districts. This is important because, to the extent a Public Health District is interpreted to be a political subdivision, the ability to finance public health projects is jeopardized due to a recent Idaho Supreme Court interpretation of Article VIII, Section 3 of the Idaho Constitution.

Without this change, health districts, which do not hold elections or levy taxes, cannot obtain financing from the Health Facilities Authority due to the lack of certainty created by the Idaho Supreme Court in a case dealing with the City of Boise's attempt to build an airport without holding an election. The court changed the law as it applies to cities obtaining long-term financing, but left it unclear whether its ruling applied to entities that do not have the power to hold elections.

This change will give the Health Facilities Authority the certainty required to finance projects necessary to health districts.

Senator Coiner asked if Health District employees are State employees? **Mr. Kane** answered that by Statute 39-401 they are employees of the Health District, but the personnel commission rules apply to them by Statute.

Senator Darrington asked isn't that because Federal employment rules always require a public agency to have some kind of a personnel organization that they have to use and follow their guidelines? **Mr. Kane** replied that is correct. They also say that by State Statute they are also members of PERSI as well. They are hired and fired by the Health Districts.

Senator Coiner asked how will that affect employees regarding PERSI? **Mr. Kane** answered that is why this RS says "For the purpose of this chapter" because in that chapter it tells us that the Health District is not a subdivision of the State, but employees are in PERSI and they are in the State personnel division.

Senator Werk said, regarding Mr. Kane's indication that there are two health districts that are currently having issues and one that sounded like it might be in the middle of an issue, he doesn't see any emergency clause in this RS. He asked if that is because if it passes the legislature and the Governor signs it, then the guys rating your bonds will feel that is good enough? **Mr. Kane** answered that they won't turn down an emergency clause if they can get one, but frankly he thinks the bond council will feel comfortable enough knowing that by July this will be in place to lend them the money they need.

MOTION

Vice Chairman Broadsword moved to print RS17813. The motion was seconded by **Senator Bair**. The motion was carried by **voice vote**.

RS17761

Stating Findings of the Legislature and Rejecting Pending Rules of the Department of Health and Welfare Pertaining to Rules Governing Temporary Assistance for Families in Idaho

Vice Chairman Broadsword explained that this concurrent resolution would reject a pending rule of the Department of Health and Welfare pertaining to the rules governing Temporary Assistance for Families in Idaho (TAFI) (Docket No.16-0308-0701). The effect of this resolution, if adopted by both houses, would be to prevent the agency rule from going into effect.

MOTION

Senator McGee moved to print RS17761. **Senator Coiner** seconded the motion. The motion carried by **voice vote**.

RS17800

Relating to Prior Authorization of Medications

Bill Roden, Representative for Pharmaceutical Manufacturers Research Association (PhRMA), explained that this proposed legislation statutorily creates a Pharmacy and Therapeutics Committee in the office of the Governor, appointed by the Governor, and serving at his pleasure, for the purpose of receiving evidence-based clinical information and making non-binding recommendations to the Director of Health and Welfare, concerning administration of the prescription drug program within the Department of Health and Welfare. The committee's charge is to make objective evaluations of the relative safety, effectiveness and clinical outcomes of specific drugs in comparison to other drugs in the same drug classes. Cost information relating to drugs will not be considered by the committee. However, cost of drugs would be considered by the Director, in addition to his consideration of the committee's clinical recommendations and other evidence, to determine which, if any drugs would require prior authorization from the Department prior to being prescribed for a Medicaid patient. The committee is to consist of four physicians licensed to practice medicine, three licensed pharmacists, and one nurse practitioner or physician's assistant authorized to practice in the State of Idaho.

Senator Darrington asked if it would be Mr. Roden's proposal that the committee rest in the Department and be appointed by the Director of the Department, or if he considers that a conflict? The reason he asks this question is because the legislature has had a habit for a number of years of piling appointments on the Office of the Governor. He has heard Governors say that it takes one and one-half manpower in the Office of the Governor just to deal with appointments. It is huge in scope for them. This is an important board, but compared to the big things in life it is a lesser board. **Mr. Roden** replied that they have had discussions back and forth and he is not aware of any opposition to this in the Office of the Governor in terms of the appointment. The only mention in the State Code of a prescription drug program in the Medicaid Program, is less than one line in the entire public systems law, which merely says that the Department will establish a prescription drug program. That's all it says and everything else is left up to rule. So the Department did adopt the rule and they provided for it to be appointed by the Director by rule. There is no Statute. The problem is the independence of that committee, the ability of that committee to operate independently of what the Department or Medicaid Division may want. It has the appearance at least of the lack of independence and a lack of the ability to objectively analyze and evaluate the drugs and the clinical aspects of those drugs. This also requires the

pharmacy and therapeutics committee to act in the open public. **Senator Darrington** stated that he will hold his further questions because the merits of the bill will be debated after printing.

MOTION

Senator Darrington moved to send RS17800 to print with the change in Line 13 replacing "Office of the Governor" with "Office of the Director of the Department of Health and Welfare." The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Senator Werk stated he would vote to print this RS, but that he doesn't like the idea of preemptively printing legislation in order to influence negotiations that seem to be ongoing. He said he has a lot of discomfort over many of the things that are being said, including the idea that the fiscal note indicates no anticipated extra costs, when the point of the legislation appears to be to remove some of the authority from Medicaid, where there may be cost considerations, and also allows physicians to over rule the prescribing of drugs that are outside the formulary, which could, of course, increase costs.

Vice Chairman Broadsword asked that, assuming the Committee votes to print, there has been some discussion about formularies, that the drugs chosen by Medicaid are not necessarily the ones that best treat every patient, and that the doctor's ability to make that decision has been taken out of his hands, will these issues be addressed when Mr. Roden comes back? **Mr. Roden** said that they will.

Senator McGee stated he thinks Mr. Roden should have an opportunity to respond to Senator Werk's comments. It was his understanding that Mr. Roden said that all parties in negotiation agreed that this bill should be printed. So, he is having trouble understanding why that might influence the negotiations. He asked Mr. Roden to comment on that. **Mr. Roden** said that he didn't mean to say that there were very specific negotiations; they are trying to make sure people within the agency, the Director, the Governor's office, and the healthcare world in general have no problems with this bill if they can do so. They can't always resolve those things. There is not intent to influence the negotiations by the introduction of this bill.

Senator Kelly said that if we do have a hearing on this, there are questions. There is no provision for terms or for appeals of the decisions of this committee, the usual kinds of things we see in this type of bill. **Mr. Roden** replied that there is nothing in Statute today about it. This bill does provide for the makeup of the committee which is exactly the same makeup of the non-departmental staff as exists today in their current rules. In fact, none of the qualifications are changed from how it exists today.

Chairman Lodge called for a vote on the previous Motion. The motion carried by **voice vote**.

MOTION

Senator Bair moved to adopt the minutes of January 31, 2008. **Senator Coiner** seconded the motion. The motion carried by **voice vote**.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:56 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 7, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

GUESTS: See attached sign in sheet.

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

RS17833 Relating to Cigarettes

Senator McGee explained that Caldwell Fire Chief Mark Wendelsdorf was going to present RS17833 but had an out of town commitment. He explained that cigarettes are the leading cause of home fire fatalities in the United States, killing 700 - 900 people, smokers and nonsmokers alike. This legislation will require that only reduced ignition propensity cigarettes be sold in the State of Idaho. Although these cigarettes are not guaranteed to self-extinguish, they are expected to reduce accidental fires and related personal injury and property damage caused by cigarette smoking. Recently 22 states have passed legislation consistent with this RS. The legislation details the testing and packaging standards for cigarettes to be sold, offered for sale, or possessed in the State, as well as the civil penalties relating to the improper sale of tobacco products. The funding for the implementation is generated by a fee for each certification required under this legislation.

Each manufacturer shall pay a \$1000 fee for each brand family listed in a certification to a special account in the state operating fund created to be known as the "Reduced Cigarette Ignition Propensity and Firefighter Protection Act Enforcement Fund." Currently there are 363 brand families in Idaho. There will be an estimated \$363,000 for use by the state fire marshal for processing, testing, enforcement and oversight activities required by this law.

Vice Chairman Broadsword said that the Statement of Purpose says that "the legislation details the testing and packaging standards for cigarettes to be sold, offered for sale, or possessed in the State." Does that mean we're going to fine citizens from other states who might have a package of cigarettes in their pocket that are not self extinguishing? **Senator McGee** said it is his understanding that this is not the case. This

would affect cigarettes that are purchased in the State of Idaho.

Chairman Lodge asked about Internet sales, how will that be controlled? **Senator McGee** said he doesn't know how Internet sales will be affected. He thinks they will be treated just like any other sale of cigarette. He referenced page 5 under Idaho Code, Section 39-8905 under Marking of Cigarette Packaging, talks about markings that the packages must have. It is his understanding that cigarettes sold over the Internet would have to have the same certification and markings. **Chairman Lodge** said she believes she has heard that it isn't happening. Her concern is over the statement of purpose where it says "possessed in the State" might need to be looked into before, if this is printed, we have another hearing. **Senator McGee** said he agrees with that and will make sure that question is fully answered.

Senator Darrington asked why don't the manufacturers, considering what is happening, just make them all that way? **Senator McGee** said he thinks that is a good question. His understanding is that the industry is slowly heading in that direction, but until they fully decide, and with 28 states having not agreed that fire safe cigarettes are mandatory, there is a market for the normal cigarettes. Until every state does that there will still be a market for non firesafe cigarettes. It is his hope that the industry will decide to go that way, but until that time he thinks this kind of legislation is necessary to help protect folks from the fires caused by cigarettes.

Senator Hammond asked about the cigarettes - are they wrapped with more layers, or are there rings? **Senator McGee** read the description. "The most common fire safe technology used by cigarette manufacturers is to wrap cigarettes with two or three thin bands of less porous paper that act as speed bumps to slow down a burning cigarette.

Senator Darrington said he will support this, but in his college days guys took cigarettes out and tried to start fires in cheat grass and never succeeded, but said a fire was started by a cigarette in a wastebasket in the Capitol. **Senator McGee** said all he can do is go back to the numbers from the State fire marshals about the number of fires caused by cigarettes in Idaho.

MOTION

Senator Hammond moved to print RS17833. The motion was seconded by **Senator Darrington**.

Senator Hammond said when this returns for hearing, please address any increase in cost for the consumer. **Senator Kelly** said she would like to also hear about the fiscal impact.

Chairman Lodge called for a vote on the motion. The motion carried by **voice vote**.

S1377

Relating to Wholesale Drug Distribution

Mark Johnston, Executive Director, Board of Pharmacy, explained that

S1377 will make three changes. The first is the elimination of the required bond for licensure for wholesale distributors, the second would eliminate the need for the fund to store those bonds, and the third would clarify which lawsuits the designated representative would have to give information on in licensure application. Additionally it would establish an emergency situation.

Senator Werk asked why remove the bond requirement? What is the issue with the bond requirement? **Mr. Johnston** replied that the maximum fine that the Board of Pharmacy can impose is a \$2000 fine. This is a \$100,000 bond which is written into Statute to cover potential fines that the Board may impose. So it is 50 times greater than they would ever be able to fine for. Because of this inordinate amount of bond there have been many wholesalers who have called and refused to seek licensure in the State, including some that are sole distributors of medications, which have rendered those medications unavailable - mainly to veterinarians in the State. The fear is that, with decreased competition, the cost of other items will go up. **Senator Werk** asked if the idea of the bond was purely to cover potential fines, then why not place the amount of the bond down to the level where there might be continuing fines. Is there a possibility where a wholesale distributor could be fined on a daily basis for activities that they were engaged in that would add up to \$100,000 rather rapidly, or is it a one time thing? **Mr. Johnston** answered that it is a \$2000 fine per occurrence and the occurrence could be interpreted that way. If someone on 100 consecutive days broke the law, he supposes 100 fines could be imposed. The Board of Pharmacy has never done that in the past, but that is plausible. The ultimate penalty that the Board has is to revoke the license and not allow them to distribute into the State. The Board of Pharmacy isn't into the business of making money, so they believe that they have the ultimate control in the ability to license.

MOTION

Senator McGee moved to send S1377 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Darrington**.

Vice Chairman Broadsword said there is an emergency clause at the end of the bill that is in place for several reasons, but most of which is so that small suppliers can begin operating in Idaho as soon as the bill passes.

Chairman Lodge called for a vote on the motion. The motion carried by **voice vote**. **Vice Chairman Broadsword** will sponsor this bill.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:26 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
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 Annex 5th Floor.

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 11, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senator Kelly

GUESTS: See attached sign in sheet.

CONVENED **Chairman Lodge** called the meeting to order and introduced Travis Beck, Gubernatorial Appointee.

GUBERNATORIAL APPOINTMENT HEARING **Travis Beck**, Business Owner, was appointed to the Commission for the Blind & Visually Impaired to serve a term commencing July 1, 2007 and expiring July 1, 2010.

Chairman Lodge asked Mr. Beck why he enjoys serving on the Commission? **Mr. Beck** said that the experiences he has had in his life allow him to have valuable input on the things going on in the blind community. He said it is easier many times to sit on the sidelines and not be an active participant in what is going on.

Vice Chairman Broadsword asked if it is correct that Mr. Beck has only been on the Board for a year or so? **Mr. Beck** answered that is correct. **Vice Chairman Broadsword** asked what he has seen as challenges that the Board is facing and how he has enjoyed or not enjoyed coping with those challenges? **Mr. Beck** answered that fortunately right now there are not a lot of difficult challenges. The Commission for the Blind has a really good staff and a good Administrator. The blind community itself has issues going on; children, for instance, and employment for the blind.

Senator Darrington asked what professional organizations for the blind Mr. Beck belongs to? **Mr. Beck** said none. **Senator Darrington** asked if Mr. Beck is tough enough to deal with feuding or disagreements between professional organizations that may try to influence or effect the running of the Commission of the Blind? **Mr. Beck** said he is. He believes that you first have to be willing to listen to what both sides have to say because there is usually a reason for feuding stemming from strong convictions. He believes usually, though, when making a decision it is best to decide on the side of the individual rather than on any one organization. Organizations are good for input, but they shouldn't have the final say for the individual person. **Senator Darrington** asked if Mr. Beck is satisfied with the results of the remodel of the Commission for the Blind building?

Mr. Beck answered that he thinks it is an improvement from where it was. The layout is more user friendly and he has heard positive feedback from people. It is much better than it was.

Senator Werk asked Mr. Beck to confirm his personal address. **Mr. Beck** did so.

Chairman Lodge recognized Angela Jones, Administrator for the Commission for the Blind and Visually Impaired, who came in support of Mr. Beck. She stated that the Committee will vote on Mr. Beck's confirmation at tomorrow's Committee meeting.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

S1344

Relating to Insurance

Larry Tisdale, Bureau Chief of the Financial Operations Bureau in the Division of Medicaid, said that after printing this bill some property and insurance casualty companies had expressed some concern about the definition of insurer in the bill. The Department tried to follow the language in the Federal legislation which mandated this Statute. These companies asked for clarification which the Department believes is succinct and reasonable. Today he is asking the Committee to take S1344 to the 14th Order of business for amendments.

Chairman Lodge asked Mr. Tisdale to explain the amendments and where they would be in the bill. **Mr. Tisdale** answered that they would delete "insurer" and insert "health insurer" in Idaho Code, Section 41-318, line 12.

Vice Chairman Broadsword asked Mr. Tisdale to clarify - at first she understood that he was going after health insurance but not disability insurance, and now it sounds like he is going after disability insurance but not health insurance? **Mr. Tisdale** said in Idaho Code health insurance is provided under the disability section of the insurance law. What they don't want to go after is property and casualty insurers. What those insurers asked the Department to do is to make specific reference to the disability section of Idaho Code where health insurance is provided for in the Statute and to exclude property and casualty insurers so that there isn't inappropriate access to personal injury type policies. **Vice Chairman Broadsword** asked Mr. Tisdale to specify which line "health" will be inserted in front of insurance? **Mr. Tisdale** replied it is on page one of the bill on line 12. They will delete "insurer" and insert "a health insurer that provides disability insurance as defined in Section 41-503 of Idaho Code."

Senator Werk asked are the issues we're talking about required by Federal Statute? **Mr. Tisdale** replied that is correct. This Statute very closely follows the wording set forth in requirements of the Department by Section 6035 of the Deficit Reduction Act of 2005. **Senator Werk** asked if the reason this needs amending is because the broad definition of insurer doesn't provide a tight enough vehicle for the Department to determine if someone on Medicaid has health insurance coverage? **Mr. Tisdale** said

the Department believes the Federal intent was that the Department have access to verification of information and the ability to recover from health insurers. It comes under Medicaid being the payer of last resort. There is another section of financial requirements of the State to pursue at fault third party liability or casualty recovery and they would do that separately. There is code of Federal regulation that deal with that separately.

MOTION **Senator Werk** moved S1344 be sent to the amending order. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**. **Senator Werk** will sponsor this bill in the 14th order.

S1345 Relating to Medical Assistance

Mr. Tisdale said at this time the Department would like to withdraw S1345. They will work on S1345 and bring back a different version in the next legislative session.

MOTION **Senator Darrington** moved that S1345 be held by the Chairman. **Vice Chairman Broadsword** seconded the motion. There were no objections to this motion and it carried by unanimous consent.

H390 Relating to Pharmacists

Mark Johnston, Executive Director, Board of Pharmacy, said this bill provides for the revision of Section 54-1705 (24) in Idaho Code which will harmonize the definition of "practitioner" with the definition of the "practice of pharmacy" in Section 54-1704 in Idaho Code, by deleting the phrase "other than a pharmacist" from the "practitioner" definition.

RS17880 Relating to Naturopathic Physicians Licensing Act

Senator Coiner said the purpose of this legislation is to identify the educational and exam standards for naturopathic physicians. The law will clarify that an approved naturopathic program is one that is approved by an accrediting body recognized by the United States Department of Education and identifies the exam required for licensure as the national exam known as NPLEX. Because the current board has been operable for two years and has not been able to draft rules to pass the legislature, but has issued licenses, this change provides for new Board members to be appointed who meet the standards of the Statute. The proposed changes will allow a new Board to move forward, develop rules and issue licenses in a timely manner. These changes provide licensure for those who were medically trained as naturopathic physicians while continuing to allow for naturopaths with limited training and natural health care workers to continue to practice.

Vice Chairman Broadsword asked if this legislation still contains the grandfather clause? **Senator Coiner** answered that it still remains in the legislation.

MOTION **Senator McGee** moved that RS17880 be sent to print. The motion was seconded by **Senator Werk**.

Senator Darrington stated that he has never favored licensure for Naturopaths but the bill passed and became law for the State of Idaho,

and he accepts that. Unlike all other groups that have received professional recognition from the State, the Naturopaths fight among themselves. It is time that they decide, if they want to be a professional group within the State, to act like a professional group and allow the Committee to develop standards to allow them to create a Board for the licensure of professionals. He has seen this feud for 25 years without resolution, and it is about time for it to end. **Senator Coiner** said it seems when the original was written it wasn't tight enough and, through rulemaking, an effort was made to expand the Statute. Rules are there to define things within the Statute. If RS17880 passes it defines certain things that are not left up to the Board. In the future if there is another examination accepted by the Department of Education, at that time we can address those. **Senator Darrington** said that for years the leaders of organizations have informed their members to make contact with the Committee stating that the Committee must license Naturopaths so that people can go to the Naturopath of their choice. The presence or absence of rules or licensure doesn't affect the ability of constituents to go to the Naturopath of their choice and receive the services provided. So, those messages are ill founded because they are not true. While all this mess is being sorted out by the legislature, folks still have the ability to go to the Naturopath of their choice.

Senator Werk reminded the Committee that there is another bill floating around that would repeal the Statute if peace cannot be made in the community of Naturopaths. He is not a cosponsor of this bill and hopes, like Senator Darrington, that peace can be made, but he will push for repeal of the Statute if peace cannot be made. **Chairman Lodge** said she has that bill and repeal is still an option.

Chairman Lodge called for a vote on RS17880. The motion carried by **voice vote**.

RS17896

Relating to the Hospitalization of the Mentally Ill

Senator Stegner stated this legislation makes adjustments to the involuntary commitment process in an attempt to improve identified deficiencies. He said he will go over the proposed legislation in detail with the Committee when it is printed and comes back before the Committee.

MOTION

Vice Chairman Broadsword moved to print RS17896. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

MOTION

Senator Hammond moved to accept the minutes from February 4, 2008. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

MOTION

Senator Coiner moved to accept the minutes from February 7, 2008. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

MOTION

Senator Bair moved to accept the minutes from February 6, 2008. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

ADJOURNMENT Chairman Lodge adjourned the meeting at 3:38 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 12, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senator Werk

CONVENED: **Chairman Lodge** called the meeting to order.

GUBERNATORIAL APPOINTMENT COMMITTEE VOTE **Travis Beck**, Business Owner, was appointed to the Commission for the Blind & Visually Impaired to serve a term commencing July 1, 2007 and expiring July 1, 2010.

MOTION: **Senator Darrington** moved to send confirmation for the appointment of Travis Beck to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

Chairman Lodge said there will not be a meeting tomorrow. Thursday there will be an agenda, and on Monday the only thing on the agenda will be the Naturopaths. **Senator Kelly** asked Chairman Lodge when she goes to present the budget to JFAC? **Chairman Lodge** said she is scheduled for Friday. With the budget we have now there isn't too much we can suggest because the budget is pretty tight. **Senator Kelly** said she feels the Committee still wants to focus on substance abuse and mental health - dealing with them from the front end instead of the back end. **Vice Chairman Broadsword** said she believes the sentiment on the Committee is that there has to be some way - at a minimum we should fund part of the substance abuse treatment. **Senator Kelly** said she had been thinking that the Chairman could convey the thoughts of this Committee to JFAC from our policy standpoint based on the testimony we've heard and the issues we're dealing with. That would be something we could re-enforce - understanding that the dollars are limited, but we see the value in focusing on that. **Senator Bair** said he wants to re-enforce what **Vice Chairman Broadsword** said. The consensus of the Committee is that we need to put more money towards prevention. **Chairman Lodge** said she will take those ideas and put some things together.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 3:15 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

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MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 14, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign in sheet.

CONVENED: **Chairman Lodge** called the meeting to order and wished everyone a happy Valentine's Day.

BILLS

S1398 Relating to Cigarettes

Senator McGee stated that this legislation will require that only reduced ignition propensity cigarettes be sold in the State. Although these cigarettes are not guaranteed to self-extinguish, they are expected to reduce accidental fires and related personal injury and property damage caused by cigarette smoking. He introduced Caldwell Fire Chief, Mark Wendelsdorf.

Mark Wendelsdorf, Caldwell Fire Chief, said he is representing Caldwell Fire Department, the Idaho Fire Chief's Association and said he sits on the Board of Directors of the Western Fire Chief's Association. He presented statistics about fires in Idaho and shared that recently 22 states have passed legislation consistent with the language in S1398. The model legislation in this bill has been reviewed and worked on by many people, including the fire service, and cigarette manufacturers and distributors. To his knowledge this bill has no opponents. He explained specific sections of this proposed legislation. He asked for the Committee's support in his effort to provide a higher level of safety for the citizens of Idaho.

Senator Werk said he is fully in support of this legislation. He asked about the timing in this legislation. If passed, the legislation says it goes into effect on July 1, 2008 but there is a pretty substantial testing regime and fines associated with knowingly selling cigarettes that don't meet the

standard. However, he doesn't see any phase in period. **Chief Wendelsdorf** said that Dave Nuss with the National Fire Protection Association is more familiar with the wording, but there is a phase in process that is allowed under this statute, and the testing methods are similar to methods used in the other 22 states. **Senator Werk** said he hasn't identified the phase in, and would like to see it identified. His other question is that there is a testing procedure and he isn't sure if the legislation says that if a state has gone through a similar regime we would offer reciprocity to accept their testing as complying with our testing.

Vice Chairman Broadsword asked about the charts provided that show a drastic downward trend in the numbers of fires in Idaho. She asked Chief Wendelsdorf to tell her if he feels this legislation is necessary based on this downward trend? **Chief Wendelsdorf** said he believes if we save one life or prevent one fire it was necessary. It is very tragic when dealing with those types of events. Prevention is very hard to quantify, but when we look at the potential nursing home fire in Oregon that was prevented by the use of a reduced ignition propensity cigarette, that one save speaks of the value of this legislation. **Vice Chairman Broadsword** said on the fiscal note the estimate is that this will raise \$363,000 to be used for processing, testing, and enforcement. Does the Fire Chief in a community normally go out and enforce who is selling cigarettes and who isn't? Aren't there other agencies who are already dealing with that and wouldn't you cede the authority to them to make sure they were fire safe cigarettes? **Chief Wendelsdorf** said this is better answered by Mark Larson, State Fire Marshal. The intention is that every three years that \$363,000 would be raised for the State to work cooperatively, so as they do other duties with the cigarettes and taxes, they would be able to also check for the markings to make sure they are fire safe cigarettes.

Senator Bair asked about Section 39-8906, line 39 which says cigarettes shall be turned over to the State Tax Commission. Why is the tax commission responsible for taking care of that? It seems like it should be the Fire Marshal that seizes bad cigarettes. **Chief Wendelsdorf** said he will defer that to Mr. Larson.

Mark Larson, State Fire Marshal, said his office is a Division of the Department of Insurance. He said this legislation places several responsibilities into his office. This is model legislation that has been enacted in 22 states so that the same language is adopted in each state. He is required to report on the effectiveness of the law every three years and his office is required to maintain a registry of the approved brands and their markings, and he is authorized to promulgate rules to effectuate the purpose of this law. It also permits the Attorney General's Office and the State Tax Commission to have a level of involvement in the regulatory process. After discussing this legislation and the duties with other State Fire Marshals from states where the legislation is in place, he feels he can carry out the duties and responsibilities that this proposed statute puts on his office without any additional employees and without any funding above the fees generated by the bill. He supports this legislation.

Senator Darrington said he doesn't see a chart in the packet that shows what percentage of total fires that cigarette fires are, but there are

probably other causes that are equally high such as candles, kids playing with matches, chimneys, and so on. If that is true, why target cigarette caused fires? Is it because it is one we can attack, one we can approach? **Mr. Larson** said in Idaho statistics, in the last 13 years, there have been an average of 5,560 fires in Idaho. Of those, an average of 105 fires a year are related to cigarettes. Not a large number. To answer Senator Broadsword's question about the number of fires declining, across the nation, fewer people are smoking. Back to Senator Darrington's question. In Mr. Larson's business they call cigarettes an ignition source. If we can apply a simple technology without adding cost, without changing flavor, without doing anything detrimental, making it easier for manufacturers and distributors to have the same products that they can deliver everywhere without keeping a separate truck for Idaho, Oregon or wherever, it seems like good business.

Vice Chairman Broadsword asked Mr. Larson to follow up on her question about enforcement. Is this something that has been in his purview, or is this something new? **Mr. Larson** said he doesn't want to become the cigarette cop for the State of Idaho, that is not what he envisions for his role. In the states that have implemented this, they have all had that 13 month period to allow retailers to use up their inventory and the manufacturers to deliver the cigarettes. The State Tax Commission typically checks for the state tax stamp and examines for the reduced ignition propensity mark. No State Fire Marshal's Office is engaged in any enforcement activities and, to the best of his knowledge, no fines have been levied or collected. The language of the law was proposed by the industry.

Senator Kelly said she is unclear about what the \$363,000 will be used for. **Mr. Larson** said it is to be used for the testing, which they don't do because they will accept testing in states that are already there. Given the 13 month lag time and the fact that the AG's Office and the Tax Commission are involved, he envisions his office handling the cigarette certification money like the Department of Insurance handles premium tax. They will collect it and then it will go someplace else. If the Tax Commission needs the money to pay for additional staff for cigarette related activities, they could access this money for regulation. He said he doesn't know an exact answer but has 13 months to figure it out should this pass.

Vice Chairman Broadsword asked if some of that money could be used for education purposes and fire prevention, not only for cigarettes, but for other things? **Mr. Larson** said the language of the bill leads him to believe that it cannot. There is a separate section that talks about fine money being used specifically for education and prevention, but to the best of his knowledge, no states have collected any fines.

Senator Kelly asked if Mr. Larson's office wrote the language of the legislation? **Mr. Larson** said no, his office did not write this legislation. It is model legislation that was presented by the Western Fire Chief's Association. It is the same language that has been used in all the other states. **Senator Kelly** said she has questions about the specific language in the bill and doesn't know who is prepared to answer them. **Mr. Larson**

deferred to Mr. Nuss from the National Fire Prevention Association.

Senator Werk said his impression is that the State Tax Commission does in fact have seizure authority for contraband that isn't properly stamped. So, it seems we are working at cross purposes if we have the Fire Marshal who will seize cigarettes if they're slow burning, but the Tax Commission seizes cigarettes if they're not properly stamped for taxation purposes.

Senator Kelly said one of the questions she has is that there appears to be a conflict between section 5 and section 6 on page 6.

Dave Nuss, National Manager, National Fire Prevention Association, and the Coalition for Fire Safe Cigarettes, passed an example of the cigarette paper with the banding that reduces the flow of oxygen to the burning cigarette so that the temperature of the cigarette does not reach the ignition temperature of clothing, upholstery or bedding. Nationally, cigarette fires are the number one cause of fire related deaths in single family homes.

Senator Werk said he is looking for a phasing in of compliance and also reciprocity for testing. **Mr. Nuss** said the 13 month phasing in period is found in Section 39-8911 (page 7 of proposed legislation) Section 3. This is so that wholesalers have time to expend their inventory. The reciprocity really works through New York State. New York State is the only state that will actually conduct the testing to the ASTM standard. The reference to this is on page 4 of the proposed legislation Section 39-8903, subsection 8. **Senator Werk** said this tells us that our standards will be in accordance with New York standards. What he is trying to find out is if a manufacturer tests their cigarettes and sells them in one state, do they have to go through the testing again in Idaho? **Mr. Nuss** answered they do not. Manufacturers certify to the State of Idaho that their products meet the ASTM flammability standard.

Senator Kelly asked about page 3 of the proposed legislation, Section 39-8903, subsection 6. If she were the State Fire Marshal she wouldn't know how to read this to find when her report was due. **Mr. Nuss** said what the bill is trying to do is have the Fire Marshal come back three years after the July 1 implementation period. Granted, he has 13 months to deplete stock, but the intent is still to report back to the Committee what the effectiveness of the legislation has been, whether he has seen a reduction in the number of fires and fire related deaths and injuries from implementation of the act, how the money is being used, whether that is enough money to fund administration of the program, and whether there have been any enforcement issues in the state - those kinds of things. But in the first go around he really has three years minus the 13 months.

Senator Kelly asked about page 4 of the proposed legislation. Section 39-8904, subsection 6, sets up a fund and provides what the fund can be used for. Now we're hearing that there is not a need to enforce this. What will this money be used for? **Mr. Nuss** said to clarify, there are two issues here. One is the certification process which this section deals with. The State Fire Marshal's Office has to accept certifications from the manufacturers that show they're in compliance with the ASTM standard

by brand family. That's the enforcement issue. Then there is the penalty provisions in Section 39-8906 which are for non-compliance with the standard. If a manufacturer or retailer were selling noncompliant cigarettes in Idaho, those provisions would apply in that case. But up front the State Fire Marshal has the responsibility under the law to receive those certifications from the manufacturer and verify that, in fact, they're in compliance with the standard and the law. So that is what that money is being used for - to administer that portion. **Senator Kelly** said she thought what we heard from the Fire Marshal was that it wouldn't require any new FTEs or resources to do that. So, where will this money go? **Mr. Larson** said this money is collected every three years. The general mood and attitude of the Fire Marshals where this has been adopted is that at some point the preemptive clause that is in this legislation says that if the federal government does it then all the state laws go away. It would seem irresponsible to him to put on additional FTEs to deal with something that will go away. They can, under their operating money, hire temporary employees if additional staff are needed to handle the influx of paper work, and the compiling of data - not adding staff to the Department of Insurance that could go away. If it stays in place and is a long-term deed then they can determine if it does indeed require additional staff. **Senator Kelly** asked about the preemption issue under Section 39-8911 and about local regulation in Section 2. She asked Mr. Nuss to explain both. **Mr. Nuss** said the first attempt at the federal level to try to pass legislation like this was in 1974. It wasn't successful, but the ASTM standard came from this. In 2004 the Fire Service Agencies and the Coalition for Fire Safe Cigarettes started going state to state beginning with New York to initiate the legislation at the state level. Since that time R. J. Reynolds was the first major manufacturer to announce that in 2009 they will manufacture only fire safe cigarettes. So, we're getting where we want to go without federal law. But, one of the things the cigarette manufacturers have insisted upon in model legislation is if the federal government does take action, that would preempt state laws. They are concerned with consistency within the states. The way we're getting consistency now is with the model legislation. But ultimately they would like to have a federal law consistent throughout all states. So that is why the preemption clause is in the model legislation. Section 2, Local Regulation is if the state adopts ASTM standards and then a city adopts different standards, that would create a nightmare for manufacturers. So this clause prohibits a local jurisdiction from enacting something different than the ASTM standard being enacted at the State level.

Vice Chairman Broadsword summarized that this is legislation that the manufacturers have agreed to and is being accepted state by state, and basically, it is something we should do to reduce the number of fire related deaths from cigarettes in Idaho. **Mr. Nuss** stated that is absolutely right. Manufacturers do not oppose this legislation because it's consistent from state to state. They are having to comply with it already, so it is just a matter of complying with it now in Idaho. **Vice Chairman Broadsword** said if they were opposed to this every lobbyist for manufacturers would be here to testify.

MOTION

Vice Chairman Broadsword moved to send S1398 to the Senate floor

with a do pass recommendation. **Senator Bair** seconded the motion.

Senator Kelly asked what was the motion? **Chairman Lodge** said send to the floor with a do pass. **Senator Kelly** said she was not finished with questioning. **Senator McGee** said a motion is always in order. Senator Kelly can continue to question people, but a motion is always in order.

Senator Kelly said Section 39-8908, Inspection seems extremely broad. **Mr. Nuss** said it does. The intent of the broadness there is to give authority within the bill to promulgate administrative rules. In some states it is entirely up to the Department of Taxation to verify the marking on the packs and cartons of cigarettes. In some states it is entirely up to the State Fire Marshal's Office, and in most states it is some combination of the two. That is something Fire Marshal Larson would do through the administrative rule process to identify and delineate exactly who would be out there looking at the cartons and packs of cigarettes to verify that they are marked according to standards.

Senator Kelly asked Fire Marshal Larson, page 6, Section 39-8906, (6) says a State Fire Marshal may file an action in District Court. Do you have that authority already? **Mr. Larson** said as the State Fire Marshal he is empowered as the Chief Arson Investigator of the State and, in matters of arson investigation, has the same powers as the county sheriff. He has the power of subpoena, but doesn't know specifically if he has the power listed in this section already. He said he is not an attorney but would certainly consult one.

Chairman Lodge called for a vote on the motion to send S1398 to the Senate floor with a do pass recommendation. The motion carried by **voice vote**.

S1384

Relating to Public Health District Boards

Michael Kane, Attorney for the Southwest District Health Department, said the purpose of this bill is to clarify that Public Health Districts are not political subdivisions of the state similar to counties or cities, but are rather independent public bodies similar to special purpose districts. This is important because to the extent a Public Health District is interpreted to be a political subdivision, the ability to finance public health projects is jeopardized due to a recent Idaho Supreme Court interpretation of Article VIII, Section 3 of the Idaho Constitution. He stated there will be no impact on the general fund of the State as a result of this bill.

Senator Darrington moved to send S1384 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**.

S1426

Relating to the Hospitalization of the Mentally Ill

Chairman Lodge said there was a problem with the information about this bill on the Internet last night. **Vice Chairman Broadsword** said Jeff Youtz, Director of Legislative Services, addressed JFAC the other day and said that we, as a legislative committee, are not bound by the open meeting laws of the State to have our items on the agenda agenda 24

hours before hearing. That is something we do out of courtesy, but it is not required by the law. **Joy Dombrowski**, Committee Secretary, said that she sent the agendas yesterday for today and tomorrow. Unfortunately she sent out two for the 18th and didn't know until this morning that the 14th wasn't on the website. She immediately, before 8 a.m. this morning, put it on the website. **Senator Stegner** asked if the suggestion is that this bill was not adequately publicized as being heard today for 24 hours? **Chairman Lodge** said she just doesn't want that to be a concern. **Senator Kelly** asked was the actual physical paper copy of the agenda posted? **Chairman Lodge** said it was. **Senator Stegner** said that is the legal standard for which we make determinations for whether or not something is put on the agenda. The website is an extension and a courtesy but is not the legal agenda notice. **Chairman Lodge** said that is what she understands as well, but wanted him to be aware of it before he got into this bill.

Senator Stegner explained that this legislation is the recommendation of the Sub-Committee on Mental Health of the Health Care Task Force and is the result of a study of the involuntary commitment statutes of Idaho. The Sub-Committee on Mental Health held hearings and took testimony this past year on the status of the involuntary commitment process and laws in Idaho and determined that, for the most part, they were not in need of any major overhaul. This legislation makes adjustments to the involuntary commitment process in an attempt to improve identified deficiencies. The changes are as follows:

Definition of "Likely to Injure Himself or Others" and "Gravely Disabled" - it broadens these definitions.

Holding Proceedings in Abeyance - defines this as an alternative to a commitment order. It adds flexibility to the court in the commitment process and enhances treatment options for the patient.

Jurisdiction and Venue - allows jurisdiction to the district court of a county where a patient is found, or the county of residence of the patient.

Vice Chairman Broadsword asked Senator Stegner to give clarification to this section where it says that the hearing could be held at a facility or even at the home of a patient? **Senator Stegner** answered that there could be a situation where a hearing was needed but it would be detrimental to move the patient. So the law allows that, when it is in the interest of the patient, not to bring that patient to a court of law, but to bring the court to the location of the patient.

Outpatient Commitment Process (New) - This language establishes a new procedure that allows for a court to consider an involuntary outpatient treatment rather than an inpatient involuntary commit that requires confinement to an appropriate psychiatric facility.

Repeal of Old Outpatient Commitment Statutes - Repeals old outpatient commitment statutes that have been rewritten.

There is no known fiscal impact to the General Fund as a result of the passage of this bill.

Chairman Lodge said she worked on this sub-committee this past summer and asked Senator Stegner how long he has worked on this issue? **Senator Stegner** said they have worked on ongoing mental health for four years and have had good success in improvements to the mental

health system, but there is still a lot to do. They have commissioned a report about the implementation of improvements in the mental health system in the State of Idaho from an independent outside group which will be out this summer.

Kelly Buckland, Executive Director of the State Independent Living Council, commended Senator Stegner and the Sub-Committee on Mental Health for the work that they've done over the past four years on behalf of people with mental illness. He said the State Independent Living Council is a body mandated by federal law in order for the State to get their federal independent living funds. They are not a State agency, they are a single purpose district like the health districts. The Council is made up of 22 people appointed by the Governor and 51% of them must be people with disabilities. The Council looked at this proposed legislation and they are opposed to it. The reason they are opposed to it is because it makes it easier to commit someone involuntarily because you suspect that they might become a danger to themselves or others. You don't know that, but you suspect that it might be true. We don't do that with someone we think might commit a crime. This would be removing people's civil rights and the Council believes there should be a firmer standard for that. The Council doesn't believe the problem is that people aren't seeking treatment, they believe people can't get the treatment when they seek it. This is the problem as the Council sees it. The Council supports the balance of this legislation.

Senator Kelly asked if Mr. Buckland was part of the process that went into preparing the bill? **Mr. Buckland** said he attended some of the meetings, not all of them. The Council received copies of all the sub-committee's minutes to review them before they made their decision not to support this bill.

Vice Chairman Broadsword asked if they reviewed all the minutes, did they provide feedback to the people drafting the bill and express their concerns to them about the bill? **Mr. Buckland** said they did in a round about way. That is probably something he should have done. The one meeting he attended wasn't open for public testimony. There were speakers they were hearing, but the audience couldn't testify.

Senator Coiner said he sympathizes with the thought, but it is where you choose to err. For policy decisions, what is the best? To err on the side of maybe overstepping a little in the thought of protecting someone and protecting those around them, or err on the side of protecting someone's civil rights with the chance that they may injure themselves or those around them? **Mr. Buckland** said he was a social worker for about ten years doing child protection, juvenile rehabilitation, adult protection and some mental health work. It is a judgement call whenever you think about involuntary commitment. He thinks this standard is too low. The bill doesn't include the history of someone, it says if you think they will or may, they can be held against their will.

Chairman Lodge asked exactly which sections he is referring to? **Mr. Buckland** said it is on page 2, line 32 of the proposed legislation - the definitions.

Vice Chairman Broadsword said the wording on page 2, line 32 says “a substantial risk” so its not just a suspicion, it must be substantial. She said she reads that as not just a maybe, there must be evidence that this person is going to hurt themselves or others. **Mr. Buckland** said the line above it, line 28 says “substantial risk that physical harm will be inflicted.” **Vice Chairman Broadsword** said that is already in Code. **Mr. Buckland** said that is his point. The new language says that there is a risk that they are impaired - it’s about the impairment. Another point is the issue about them being unable to provide for their own needs is language that is very similar to what is in the Adult Protection Act. It seems like people with mental illness would fall under the purview of the Adult Protection Act.

Jim Baugh, Director Comprehensive Advocacy, Incorporated, a private, non-profit corporation that receives federal grants to provide legal services, advocacy services, and public policy comment on behalf of people with disabilities, including people with mental illness. He participated in every sub-committee meeting on preparing this legislation. He commended Senator Stegner and the Committee on the excellent work they have done on mental health issues. There are some very good things about this statute that he can enthusiastically support. Incorporating the outpatient commitment and consolidating it with the inpatient commitment is a beneficial thing and makes sense. He supports fixing the problems with venue and jurisdiction as included in this bill. He said it may even be true that something needs to be done with the language of the commitment statute to cover certain populations of people who seem to sometimes sit just outside the area where the current statute goes. But he opposes the bill based on the actual language that is in this particular section - the definitions. The population the committee is focusing on is those in the revolving door. They have severe mental illness and have been a danger to themselves or other people at some point in their life, have been committed, have been discharged and then failed to comply with treatment or were unable to comply with treatment, or, as happens to some people they are trying to comply with treatment but the drugs don’t work anymore. For those people to have to wait until they deteriorate to the point where they pose a risk doesn’t seem like a good idea. Although he thinks that is what this language is designed to address, he doesn’t think that is what the language of this bill does. This language is not straightforward - it is three levels of “might.” It doesn’t limit itself to people who are in the revolving door. Language which says a person who has a “history” of these things, not just “might” do these things would identify people in that revolving door.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Senator Coiner said it seems to him that this statute is aimed at people to get them into treatment and get them help before they develop a history or the revolving door situation. If we have a person who is deteriorating, maybe for the first time, we can intercept before he goes out and develops this history. It seems to him this is a far greater thing to accomplish. He asked Mr. Baugh to address this please. **Mr. Baugh** said trying to catch people before they need involuntary treatment is very

difficult. Many studies have found that very experienced clinicians are not able to predict when a person really becomes a danger to themselves or others even under our current, more straightforward standards. Diagnosis, severity, or even degrees of delusion are not good predictors of harm to self or others. There aren't very good predictors of whether a person will be compliant or noncompliant with treatment. The only thing that is a good predictor is history. This standard doesn't require that the person is not complying with treatment. A friend of his sought voluntary treatment, and in the hospital being treated when a petition for involuntary treatment was filed on her behalf. She then was handcuffed and transported to a State hospital. She still doesn't know why that happened, but many counties don't like people in treatment on county indigence funds when they could be in treatment on State dollars if they were in inpatient treatment in a State hospital. The reasons no one uses the outpatient commitment process now are first, that there aren't outpatient facilities in many places; second we don't know who will pay for it, so the incentive is to get them committed to the State on an inpatient basis so the State will pay for it. So there a lot of factors that drive this system that are not based just on a person's diagnosis or recommendation. So we look at the language in this bill and try to figure out how to stop a person from falling off a cliff the first time, because that would be a good thing to prevent. Almost anyone with a serious mental illness might deteriorate. There might even be a substantial risk that they would deteriorate. But before we handcuff them, put them in the back of a police car and take them to the courthouse to run them through an involuntary process, and then confine them and administer drugs, we ought to have more than a suspicion that they will deteriorate to the point that they need that.

Senator Werk said he has a suggestion. He is sympathetic to both points of view. He honors the work that has been done by the mental health sub-committee and understands what we're trying to do here. He is very much concerned about the fact that we're dealing with a substantial civil liberties issue in terms of involuntary commitment. The testimony heard today makes him want to hear from the people directly involved in that commitment process - judicially and from legal counsel. For him to be able to make a decision, he wants the most information he can get, and doesn't feel he can get that today. He would rather hold the bill with the Committee and have a more expert testimony to make sure we are erring on the right side. That is his preference but it would need to please the Committee. **Chairman Lodge** said one of the people who testified to the sub-committee was a judge, so they heard about his experiences in the commitment laws.

Senator Hammond said with all due respect to Senator Werk, he feels that first of all, due diligence has been done and this is Idaho. No one wants to commit someone. He has heard today that the old language doesn't do the job and this is an attempt to move forward. We can always continue to do refinement. He would rather err on the side of at least getting something moved forward.

MOTION

Senator Hammond moved S1426 be sent to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Darrington**.

Senator McGee said he sat on the Health Care Task Force with Chairman Lodge and Senator Stegner. One of the interesting things about this legislation is that it has been in public forum not once, but twice before it has been heard here. Once before the Mental Health Sub-Committee of the Health Care Task Force which was voted on by legislators again before the full Healthcare Task Force Committee and now again today before the Senate Health and Welfare Committee. There are few bills that go through that kind of process before they hit the floor of the Senate. He said he will support Senator Hammond's motion.

Vice Chairman Broadsword said she respects the work that has been done here. What she has heard from both sides is that there is more good than bad. Even in opposition they are saying that they like part of the bill. She thinks that this can move forward and if there is a true problem that comes out because it has gone too far in one section, then we will address it at that time. But if we can make a difference in part of the work that needs to be done now, then we need to move forward. She said she will support the motion.

Senator Werk said he understands the processes that occur before it gets to this Committee, but he doesn't care. If he can't be made comfortable and, as a member of the Committee, able to obtain a broader understanding of the issues, he won't be able to support the motion. He might be convinced to vote for it on the floor, but he feels committee members who desire to have enough information to make an informed decision should normally speak and be respected. **Chairman Lodge** said she will get information on the judge who spoke to the committee to Senator Werk so he can contact him to relieve some of the concerns Senator Werk has.

Chairman Lodge called for a vote on the motion on S1426. The motion carried by **voice vote**. **Senator Werk** and **Senator Kelly** voted Nay.

MOTION **Vice Chairman Broadsword** moved to approve the minutes of February 12, 2008. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

MOTION **Senator Hammond** moved to approve the minutes of February 11, 2008. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

Chairman Lodge presented outgoing Page, Kaitlyn Roberts, letters of recommendation and gifts to thank her for her service to the Health and Welfare Committee.

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

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 18, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Lodge** called the meeting to order at 3:05 p.m. She introduced Senator Davis for words of advice.

Senator Davis said he was not speaking either in favor or against S 1425, but explained that a petition for intervention was filed in the Courts on Friday, February 15, 2008 by Michael Clement. Mr. Clement asked the Court to enter an order to prohibit the Committee, as a legislative body, and the Senate and the House, from acting on this legislation, and to compel the Committee to adopt the administrative rules. Service of this petition has only been made by faxing a copy to the Chairman of the Health and Welfare Committee. Senator Davis said service has not been effectively made and it is only a Pro Se Petition, meaning it is filed by an individual and without an attorney's assistance. There has been no Order to Show Cause entered nor any Interim Writ of Prohibition nor Interim Writ of Mandamus. Additionally, it is remarkably beyond the purview of the Court to tell the Legislature when it can or cannot enact legislation. He feels this may have the opposite effect intended by Mr. Clement. Senator Davis has copies of emails and an order that Mr. Clements references, a memorandum decision on the defendant's Motion to Dismiss entered in January - a Procedural Order of Dismissal suggesting that the moving body, the Idaho Chapter of American Association of Naturopathic Physicians, lacks standing and has failed to exhaust their administrative remedies. He doesn't know much about the internal fight that is going on between these professionals, but has provided a copy of this petition for intervention to the Attorney General's Office. He has met with Mr. Toryanski and has confidence that the matter has been submitted to the Civil Division of the Attorney General's Office and that they will monitor the matter. As far as Senator Davis is concerned, he has absolutely no hesitation in telling the Committee that as a legislative body they have full

authority to move forward and act either for or in opposition to the legislation as they think appropriate.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

BILLS

S1425

Relating to the Naturopathic Physicians Licensing Act

Senator Coiner said the purpose of this legislation is to identify the educational standards and exam standards for Naturopathic Physicians. The legislation sets a tighter limit on qualifications for licensure as a Naturopath in the State of Idaho. It dissolves the current Board, sets qualifications for a new Board, and states that the Governor has the option of choosing those people without recommendation by any organization. The one requirement for the Board is that members must qualify for licensure under this act. He feels the tactics used by those objecting to this legislation have done a disservice to their profession. One of his constituents said he has been told that this legislation puts his ability to practice in jeopardy. This bill does not affect anyone practicing today, it only tightens the qualifications for licensure.

Senator Hammond asked does this mean if a person is currently licensed as a Naturopath they would continue to be licensed as a Naturopath? **Senator Coiner** said it is his understanding that there were 14 or 15 licenses given by the current Board under temporary rules. The Licenses will expire and will need to be renewed. If S1425 passes, they would have to be licensed under its provisions. If S1425 fails there are no rules for them to operate under so there is no mechanism for them to get their licenses renewed.

Senator McGee said he knows Senator Coiner said this, but it is so essential because of the emails received and the discourse going on relating to this issue. He asked Senator Coiner to reiterate that this bill does nothing to preclude someone practicing as a Naturopath to continue their practice. Is that correct? **Senator Coiner** said that is true. The people practicing under the scope they have been allowed to practice without licensure can continue doing what they do. There are two sections in the engrossed bill that states this and these sections have not been changed.

Senator Werk explained that the bill that we have doesn't include every section in the Statute, only the sections being changed. In the Statute, Section 54-5103 (3), has the exclusion that if anyone wants to practice they can still practice.

Kitty Kunz of K2 Associates, advisor for the Idaho Association of Naturopathic Physicians, said S1425 would substantially change the Naturopathic Physicians Licensing Act. The Association she represents is opposed to these changes. She presented documents to the Committee that she said proves that it is not the Statute that is defective, but rather that it has been a tainted process of rulemaking and a very flawed

administration of the Statute by the Idaho Bureau of Occupational Licenses (IBOL) that has resulted in defective rules and questionable licenses. She said if this becomes law, the majority of Naturopaths now practicing will not be able to continue treating their patients. She asked the Committee to reject this legislation and let the Board go back to the drawing board and come up with a good set of rules for consideration next session.

Senator Coiner asked after what you just heard in the description of the legislation, where can you say that it will limit access for anyone out there now? What part of it will limit access? **Ms. Kunz** said her understanding is that if there are licensed Naturopathic Physicians in Idaho, then the rest of the Naturopaths in Idaho will not be able to purchase malpractice insurance and the products and medications they need to continue as they are practicing right now. **Senator Coiner** said so you're basically surmising that something might happen. He said he doesn't understand the connection of licensing people under a licensure bill and the others, who have been practicing all these years, how does that change things for them? **Ms. Kunz** said she is not the one who sells the insurance or the products, so she can't answer that.

Senator Werk said if he followed Ms. Kunz's logic it would mean that her desire, in order to keep this from occurring, would be that everyone, regardless of overall qualification, would need licensure because otherwise a piece of the community would be eliminated from malpractice insurance coverage and the other things she stated. According to what she said, it is inescapable. **Ms. Kunz** said that there will be a percentage of Naturopathic doctors who will not qualify for licensure even with new rules. Because the Board that is in existence wants to have competency-based exams for the Naturopathic Physicians. So there will still be some of those who will not be able to be licensed. Those certain doctors at this current time do not have those services, so it probably will not affect those few doctors who could not become licensed if there was a competency-based exam that all could take and certify that they are qualified to become Naturopathic Physicians.

Chairman Lodge asked if there is malpractice insurance available now? **Ms. Kunz** replied that there is.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

Kim Karlfeldt, a Boise Financial Consultant, CPA, said she is a consumer of Naturopathic medical services and doesn't want her health freedom choices severely limited or taken away. She said this bill is written by lobbyists for the Idaho Chapter of the American Association of Naturopathic Physicians (IDAANP), a group of approximately eight Naturopathic doctors backed by an out of state special interest group who want to take over the field of Naturopathic medicine in Idaho. She feels Senators should not be endorsing or condoning exclusivity and restraint of trade practices and referenced Idaho Statute, Title 48-102(1) Monopolies and Trade Practices. She urged the Senators to vote against

S1425 and pass S1364 to repeal the current Naturopathic Licensing Statute.

Senator McGee said a monopoly is a pretty serious charge. To have a monopoly you would have to have a group of people together excluding another group. Based on the text of the bill, which section of this text would produce a monopoly? **Ms. Karlfeldt** said three points. She told of an experience they had with a Naturopathic doctor here who said he was the only legitimate doctor in this city and instructed people not to recommend anyone but himself as legitimate. It took her and her husband years to establish that there are others who are qualified. Also, the Naturopathic Physicians Licensing Exam (NPLEX) can only be taken by Council on Naturopathic Medical Education (CNME) school graduates. If the NPLEX was a true national exam it would be open to graduates of other qualified schools, not just four in the entire nation. Also, in other states CNME graduates who have passed the NPLEX have been able to control legislation to legislate Naturopathic Doctors out of existence. That is what frightens them, that down the road Naturopathic Doctors will be severely limited or not allowed to practice.

Vice Chairman Broadsword said when legislation was passed in 2005 she sat on the Committee. It was stated in Committee that Naturopathic Physicians would be licensed and Naturopathic Doctors would continue to do business as they had been and were not being disenfranchised. This was the legislative intent from the past. The Naturopaths supported that legislation then, and now you are saying you have a fear of that same legislation? **Ms. Karlfeldt** said as that legislation stands right now, defined in such a restrictive way where only NPLEX graduates can be licensed, you are setting up a precedent where one group will control the entire field of licensing. So down the road Naturopathic Doctors who are qualified but who have not necessarily passed the NPLEX may have their practice severely restricted through future legislation. **Vice Chairman Broadsword** said when legislators deal with legislation they deal with current legislation, they can't worry about what a future legislature is going to do because they have no control over that. So, if that is your concern, you should wait until legislation preventing you from being a Naturopathic Doctor comes forward. **Ms. Karlfeldt** said she is concerned that it might be as short a term as one year, six months or three months if a limited group is allowed to dominate an entire field.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

Michael Karlfeldt said he opposes the passage of S1425. He believes the original intent of the Naturopathic Licensing Law passed in 2005 was to have all qualified doctors, including doctors who come from other disciplines, who have completed a Board approved Naturopathic medical program and passed a Board approved competency-based examination, be licensed under the Statute. He believes a majority of Idaho's Naturopathic doctors will be disenfranchised under this bill. He said the CNME has lost its accreditation with the United States Department of Education several times, so it is not without controversy. He would like the

Committee to reject S1425 and pass S1364.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

Clinton Minor, Attorney for the Idaho Board of Naturopathic Medical Examiners, stated on January 24th there was a hearing for presenting rules and concerns with those rules were voiced by the Attorney General's Office and by the Legislative Services Office. The concerns were heard very loudly and clearly by the Board of Naturopathic Medical Examiners. The Board gave him instructions to begin the process of rulemaking between now and the next legislative session. The new rules need to be specific and consistent with the Statute and objective in their analysis of both education and testing, and they need to be consistent with the opinions of the Attorney General's Office and the Legislative Services Office. He has had productive and positive discussions with representatives of both Associations, including Mr. Benton and Ms. Kuntz, and he feels there is a viable chance of putting together rules that are specific and objective. He has also made significant progress in mending fences with the IBOL. He doesn't believe S1425 is necessary.

Senator Hammond asked if he heard correctly that Mr. Minor said that the Committee should move forward with this legislation? **Mr. Minor** said he meant to say that it was the Committee's duty to move forward with a decision in this process. He does not feel it is the appropriate legislation, but that is the Committee's choice, not his.

Dr. Glen C. Mahoney, Naturopathic Physician, said he is one of the Naturopathic Physicians who would not be eligible for licensure under S1425. He said this legislation would discriminate against him because it states that only graduates of CMNE approved schools have the prerequisite education and only those who have passed the NPLEX are qualified as Naturopathic Physicians. He stated his credentials and training for the Committee. He said he strongly opposes S1425.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

Dr. Joan Haynes, Naturopathic Physician with the IDAANP, said she is a graduate of one of the five Naturopathic medical schools accredited by the CNME. She is here in support of S1425 and to answer questions about the accreditation process or the NPLEX. She said the CNME advocates high standards in Naturopathic education. She said the Committee has been told that the CNME lost its accreditation and that is true. From January 1, 2001 to 2003 the USDE pulled their accreditation rights. Instead of a problem, this should actually be seen as a favorable situation as part of the checks and balances of our education system that someone is overlooking the CNME. Once the CNME made the changes that the USDE recommended, they were reinstated and have maintained their status since then. The CNME is not the only accrediting agency that recognizes Naturopathic schools. The school she attended, the National College of Naturopathic Medicine, is also accredited at both the Masters

and Doctoral level by the Northwest Commission on Colleges and Universities, which is the same accrediting agency that accredits Boise State University (BSU). Regarding the NPLEX, the contention has been made that the examination has a lack of a practicum or a hands on component. Please note that the four year residential Naturopathic programs give plenty of opportunity for the students to pass many levels before they take exams for competence evaluation.

Senator McGee asked about the test - is that just mailed to you? **Dr. Haynes** replied that the tests are independently proctored at a testing agency. It is not an online test. It takes months to study for this examination. The first part is taken after the second year and is two days long, and the rest is taken after the fourth year. **Senator McGee** asked if she took it at her institution? **Dr. Haynes** said they go to an independent proctoring agency. **Chairman Lodge** asked if Dr. Haynes said it took five days? **Dr. Haynes** said yes it is a five day exam.

Senator Bair asked what Dr. Haynes would tell the other Naturopaths who have not attended one of the four schools? Are there not other schools, in your opinion, that teach good courses of Naturopathy and qualify people to become doctors of Naturopathy? **Dr. Haynes** said she thinks there are good schools that teach courses in Naturopathy. The distinction really becomes between Naturopathic Physician and a Naturopath. A Naturopathic Physician uses the word "physician". She believes someone who uses that title needs the education that we associate in this country with that word. We have a set up in our country's educational system through accreditation to guarantee that quality. There are plenty of people doing all kinds of great healthcare and the law allows for that under the term Naturopathy or Naturopathic Doctor.

Jason West, Naturopathic Physician, said he had S1425, the original licensing act, and the Smith decision evaluated by an attorney because he wanted to know where things stood. The difficulty comes because the Legislature doesn't define exactly what therapeutic medication is. One of the solutions may be to have certain faculty at Idaho State University, who have volunteered, to put together a psychometrically valid evaluation to test applicants to see if they are clinically competent. The language in S 1425 specifies only NPLEX for testing for licensure. He believes a pathway can be created for people who have followed a different pathway but do have the qualifications.

Senator Coiner asked are you for or against S1425? **Mr. West** said he is asking for a no vote on S1425. **Senator Coiner** said some of the solutions put forward are solutions that are not available today. The solutions Mr. West mentioned are not available today, are they? **Mr. West** responded that they are available. Dr. Nun has put together a competency evaluation, they have had it beta tested, are publishing the article, and it is ready. **Senator Coiner** said it doesn't have a history of use. Is that correct? **Mr. West** said it has been beta tested and some physicians have tested it. **Chairman Lodge** asked if it has been accredited by the Idaho State Board of Education? **Mr. West** said Dr. Nun has made an application but he isn't sure where it is in the process.

Gary Shohet, Licensed Chiropractic Physician, said he is also a certified Acupuncturist and has been practicing Naturopathic medicine for the last 26 years. He stated he is confused on what is considered a grandfather provision and what is not. He has been told there is a grandfather provision in the Statute that will allow for full licensing of Naturopathic Physicians practicing in the State. His understanding is that there is a separation of NMD, ND and unlicensed and unregistered. He asked for clarification.

Senator Darrington said *Idaho Code 54-5103, Paragraph 3, Part D* addresses this and says he can use the ND designation. **Mr. Shohet** said the confusion is the difference between being called a Naturopathic Doctor and a Naturopathic Physician. **Chairman Lodge** asked if Mr. Shohet graduated from one of the accredited schools? **Mr. Shohet** said he did not. He is licensed as a Chiropractic Physician and as a Naturopathic Doctor. Also, there are no malpractice insurance companies in this country that he knows of that will insure him as a Naturopathic Doctor. He said he has 26 years in a clinical environment and feels that he has paid his dues and should have the same designation as someone just graduating from a CNME school. He said the bill is discriminatory, untimely and restrictive of trade.

Senator Bair said Mr. Shohet stated that without a State license he can't get malpractice insurance. So what has the industry done for the last 100 or so years without insurance? **Mr. Shohet** said they have been one of the safest professions there is.

Sara Rodgers, Naturopathic Physician, said she supports S1425. She said under S1425 no one would lose their ability to practice. If a Naturopath isn't licensed as a Naturopathic Physician they don't need insurance because they will not be giving invasive procedures that this license provides for. Regardless of what people are saying about disenfranchisement, it is not true. This law is about prescribing pharmaceutical drugs and performing minor operative procedures. Doing these two things requires a full medical education like a medical doctor. In addition, Naturopathic Physicians have clinical Naturopathic modalities.

Dr. Rodgers said, historically, there has always been a division within the Naturopathic community. Years ago the fight was not about whether everyone could prescribe drugs, it was about whether they should prescribe drugs or not. This division is about protecting the public health or about expanding a scope of practice that should not be expanded from an educational perspective.

Senator Bair asked under licensure as S1425 would propose, what kind of pharmaceuticals would those physicians be able to prescribe? **Ms. Rodgers** answered that she doesn't know at this point because the law states that a formulary council is to be formed consisting of two medical doctors, three pharmacists, and two naturopathic physicians. So until the formulary is made, no one knows, and no one should prescribe until that is done. **Senator Bair** asked if she anticipates that she will be able to prescribe some forms of prescription type pharmaceutical drugs in the future or does she anticipate more along the lines of compounding

vitamins and that sort of thing? **Dr. Rodgers** answered that she can only speak from her experience in Arizona, and there she did prescribe antibiotics. Just knowing the pharmacology is important so that when someone comes in who is on several drugs she can know how her treatment will interact with these. She said she isn't on the formulary board, so she really doesn't know. **Senator Bair** asked about the compounding of vitamins using doses higher than the RDA, does that require licensure? **Ms. Rodgers** said any store that sells vitamins is selling above the U.S. RDA. The RDA is the amount of the vitamin that will stop you from getting disease.

Charles Wilcher, a member of the Idaho Board of Naturopathic Examiners, said the primary mandate from the Legislature to the Board is to protect the public. He stated that the NPLEX doesn't provide for a competency based examination or practicum. He said it has been stated that the Board will license everyone, but they have turned down individuals who have not met the requirements. No IDAANP members practice in rural Idaho, so S1425 would disenfranchise rural Idahoans from the full scope of Naturopathic healthcare. He asked the Committee to please allow the IBNME one year to work with interested parties to present acceptable rules by rejecting S1425 and S1364.

Senator Coiner asked if the Committee gives the current Board another year, how would they correct the financial difficulties they are in now and what would change to produce a different outcome than we've seen in the last two years? **Mr. Wilcher** said the ultimatum would cause special interests to fall away. **Senator Coiner** asked what special interests? **Mr. Wilcher** said the two Naturopathic Associations within the State and out of state Naturopathic organizations that are trying to influence what is taking place in Idaho.

Chairman Lodge said Section 54-5103 was already in the law before the changes made in S1425. It wouldn't keep people from practicing, it would keep them from getting a State of Idaho certification on a license. **Mr. Wilcher** said in his opinion the issue is not who does or does not get a license. The issue is that the skills of people who have been practicing in Idaho for 10 or 15 years have deteriorated because they weren't allowed to do certain things. If they are now given a license and allowed to do those things, they need a practicum first in order to protect the public.

Ken McClure, Idaho Medical Association, asked for support for S1425. From their perspective this bill does nothing more than clarify the law passed a few years ago. It was very clear that the bill was to license a few but that everyone else practicing in the State of Idaho could continue to practice within the scope of what they were then doing. Because of the expansive definition given to the Statute by the Board, we got far from the original agreement.

Senator Hammond said Mr. McClure's clarification was helpful because he is hearing from the public that if S1425 is passed it would prevent people from practicing Naturopathy. It seems if they were practicing within the last 10 -20 years, they can practice now. Is this correct? **Mr. McClure** said that is correct. The passage of this Act was an effort to acknowledge

that graduates of a four year post baccalaureate program learned a sufficient body of knowledge to justify licensure and that would be in the public interest. The Medical Association sent doctors to these schools to check the programs to make sure these programs were worthy of the State's stamp of approval. **Senator Hammond** asked if Mr. McClure makes a distinction between doctor and physician? **Mr. McClure** said that was a difficult part of negotiation. Several people called themselves Naturopathic Doctors and they didn't want to stop that. For the purpose of this legislation a clear distinction was made - a Naturopathic Doctor was one who had a Naturopathic degree or education from some place that was not the equivalent of a Naturopathic Physician. In the medical field doctor and physician are interchangeable.

Senator Coiner said it was stated in a press release that S1425 is against legislative intent of two years ago. Please address legislative intent. **Mr. McClure** said S1425 is 100% in keeping with the intent of the original legislation's passage.

Chairman Lodge asked if all the schools for medical doctors are accredited by the U.S. Department of Education? **Mr. McClure** answered the medical schools in the United States are all accredited by the Department of Education except those which are new and don't have enough track record to receive accreditation and are applying for it.

Senator Coiner asked if four year schools come forward with a Nationally accepted test, what would be the process to add that test to this Statute? **Mr. McClure** said it would be a simple amendment.

Alvin Dean Funk, Board member, IBNME, said he is an ad hoc member of this Board. He feels the Board has been portrayed as a bunch of irresponsible individuals who have no concern for the safety of the public. He has much respect for the members of this Board and those who serve in natural healthcare in the State who have practiced with an incredible safety record. Under S1425 only about nine individuals will be licensed. This is not enough to support the State. Providers of injectables will not sell to anyone unlicensed and malpractice insurance providers will not issue to anyone unlicensed.

Chairman Lodge asked if Mr. Funk read the three letters sent to the Board by the Governor stating the concerns with the rules? **Mr. Funk** said he did.

Kris Ellis, IDAANP, said unlike testimony heard today, all members of this Association have a practice in Idaho. She said clarifications to this bill are exactly that - clarifications. The current Statute's qualifications are a Doctoral level program of resident study in Naturopathic medicine. There are five schools accredited by the Department of Education in the United States. The accredited piece is not easy to get. The NPLEX exam is composed of 16 parts. It does not have the competency piece because that is required before an individual can even sit for the exam. It is updated regularly. Graduates of accredited schools want to work in states that offer licensure because they can practice to the extent of their training. The State has an obligation to its citizens to regulate this profession as carefully and completely as possible.

Vice Chairman Broadsword asked how many people in Idaho now would be qualified to be licensed under S1425? **Ms. Ellis** estimated 20 to 25. **Vice Chairman Broadsword** asked is that enough to sustain or support licensure? **Ms. Ellis** said they have discussed this with Tana Cory in the Bureau of Occupational Licenses, who said she has another Board of similar size. The legislation has raised the fee for licensure to support the Board and to pay the deficit the current Board incurred.

Senator Bair asked if licensing Naturopaths gives them access for health insurance reimbursements? **Ms. Ellis** said she does not know - that would be up to insurance companies.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

Scott Workman, Farmer, stated he is testifying for himself. He has a son who was diagnosed with MRSA Staff in his body. He went to medical doctors and was given lots of medication but it didn't help him. He was referred to a Naturopath. In six to eight weeks he went from almost losing his hand to being healed of the problem. They got away from the chemical drugs and went to a more natural solution. Because of this they grew to really appreciate Naturopaths. His concern about S1425 is that it limits licensure to a few people. He would like to see a test given to all Naturopaths to allow them be licensed. He would hate to see legislation pass that would make it impossible to get alternate healthcare because only a few people have the ability to practice.

Vice Chairman Broadsword stated that Mr. Workman heard the testimony that there is not going to be anything in this current legislation that will prevent a Naturopathic Doctor from continuing to practice. The only people S1425 will license are Naturopathic Physicians, which was the intent of the original legislation - to license those who have gone to medical school and had medical training to be a physician. She asked Mr. Workman if he wouldn't be more comfortable to know that the license on the wall meant that they had the training to be a Naturopathic Physician and that if they didn't care if they had the license on the wall he could continue to go to whoever he wanted? **Mr. Workman** said a license on the wall means they went to school, but it still doesn't mean they are a doctor. He would rather see a test that everyone could take. If they don't pass the test, don't license them. If they do pass the test, no matter which school they went to, then license them. Mr. Workman said if this legislation goes through, the person who helped his son may not have been able to do what he did for his son.

Senator Coiner said we have had good testimony on both sides of this issue. Some of the fears expressed are ill founded. This legislation won't prevent anyone who practices today from practicing tomorrow. This bill only narrows the scope of who gets licensed in the future. The Board spent two years and was unable to present acceptable rules to the Committee. That shows an inability to work together. With this narrow scope we should be able to get rules and should start licensing people in this state. If there is a test that can qualify nationally in the future, a

functioning Board can come back with rules and recommendations to expand at that time.

MOTION

Senator McGee moved to send S1425 to the Senate floor with a do pass recommendation. **Vice Chairman Broadsword** seconded the motion.

Senator McGee stated that this Committee has received the most testimony on this issue by far. He said he feels like he understands this issue and has heard great testimony today. The only compelling reason not to vote in favor of this bill would be if this would exclude someone from their practice. After hearing the testimony he feels this doesn't exclude anyone from their practice. It does set specific parameters around what it takes to become a Naturopathic Physician. The State of Idaho should have specific guidelines as to what that means. It is an improvement on the previous bill. He said he was here when the original legislation was passed, and the rules that came back were not what he had in mind. The rulemaking process was broken. No one here thinks the Board is a bunch of crazies as Mayor Funk alluded to. We have a situation that is broken and the Committee's job is to fix the situation. He believes S 1425 fixes the situation.

Vice Chairman Broadsword said when the original was passed she voted for it because she was a fan of alternatives. She believes we need to have alternative medicine available. We need alternatives for many things, including education. Her intent when she voted for the original bill was that only Naturopathic Physicians would be licensed, and Naturopathic Doctors could continue to do what they were doing. There was testimony at that time that folks went to a weekend course and became a Naturopathic Doctor. She did not want the State of Idaho endorsing them as medical professionals, which she believes a Naturopathic Physician is set out to be. This legislation tightens and clarifies that.

Chairman Lodge called for a vote on S1425. The motion carried by **voice vote**.

ADJOURNMENT

Chairman Lodge thanked everyone for coming and for the testimony received. She adjourned the meeting at 4:55 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 19, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senators Hammond and Werk

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Vice Chairman Broadsword** called the meeting to order and introduced guest speaker Debbie Field, Director of the Office of Drug Policy in the Office of the Governor.

GUEST SPEAKER **Debbie Field**, Director of the Office of Drug Policy in the Office of the Governor, gave a presentation on the Interagency Committee on Substance Abuse, Treatment and Prevention (ICSA).

Senator Darrington commended Ms. Field for her work and her passion. Because of her passion she is enjoying success where others may fail. He said he has looked at the testimonials she provided the Committee and noticed there are similar stories for those addicted to methamphetamines (meth). He asked if she would agree that when the police arrest those who have high volumes of meth those individuals are there to traffic, profit and make money. They are out to destroy the lives of our people to make money. **Ms. Field** said she agrees with that. Members on the Board of Juvenile Corrections visited with kids in gangs who are incarcerated. They said they are told to sell drugs, not to use them because they know what it does to you. This is what is fueling the gang activity right now, the money from meth. **Senator Darrington** said he is making the case about the two groups of people. The first group is the users who need treatment, and the second group are distributors who need to go to prison under the very mandatory minimums.

Senator Kelly said that the Access To Recovery (ATR) went away, and we aren't getting those Federal monies back. There is a new budget now that is going to Joint Finance-Appropriations Committee (JFAC). What is the status of all that? **Ms. Field** said now that JFAC has the real numbers of those in treatment in Idaho we can find those who are providing great services and expand that. They did apply for an ATR grant, but Idaho did

not get funded. Even though there was some disappointment, she almost looked at it as a gift because they can now step back and address this problem without anticipation of a Federal grant and Idaho can take care of its own people. Now that we have real numbers of those we treat each year we can determine how we do that. Then, when we run out of money, we can say we're sorry, we're out of money and can't treat you. However, most of those we aren't treating will end up in Brent Reinke's facility (Department of Corrections). So we either pay for it now or pay for it later.

Senator McGee said Ms. Field is doing a fantastic job and he is really impressed with the fact that she is asking private citizens and corporations to step forward and participate. This isn't just a government program to deal with. He also let the Committee know that on Thursday Ms. Field will be the keynote speaker at the Patricia Kempthorne award where much of the focus will be on the meth problem. Ms. Field was a past recipient of this annual legislative award. He said he was a little skeptical that we could replicate a program this quickly, but it has happened in large part due to Czar Field. **Ms. Field** said that is very nice, but one thing she has learned is that "I" is little and "we" is big and it is a matter of bringing people to the table. She told a success story of a business man from Northern Idaho and the impact he made there.

Senator Coiner thanked Ms. Field for the work she does and asked her to identify where there are deficiencies and needs that the Legislature can help with. He said getting the universal assessment was great. **Ms. Field** said that is the greatest part - we're identifying the real need. We're able to target our efforts to where they are needed. There was a bill they did called Any Willing Provider where anyone in our State who is an approved provider can set up anywhere in the State. There are more people in Eastern Idaho in Any Willing Provider because more people want to set up shop there. We can go to those people, tell them we're at the saturation point with the type of service they want to provide there, and ask them if they would be willing to provide that service in an area of the State where their services are needed. This gives an opportunity to really manage and hone in on our Idaho treatment. This isn't dictated by any agency, it is all agencies working together. Clearly we need more money for treatment. Judges now have opportunities through what we did last year to provide assessments early to get people into treatment. But if there is no place to put them and your only option is either to save a life or stop crime, you will put them into the more expensive option, and that is prison. That's what we have right now. **Chairman Lodge** asked if the Any Willing Provider made it through the House? **Ms. Field** said it didn't make it through the House Committee. She said she is working with them to revise it and address some more concerns.

Chairman Lodge said one of her big concerns is that some of the services being provided are not treatment services. She asked if we have been able to cut down on duplication of some of the things we were doing that weren't doing what they were intended to do? **Ms. Field** said yes, that is the process. She said it hasn't been comfortable for people to admit some failures that we've had. Those aren't easy. She said they spent \$2 million to replace meth teeth. She said she can't fault the decision, but she thinks they could have put \$2 million more into treatment and found

another fund to replace teeth and things like that. So, she said we'll be a little smarter at this as we go along.

Chairman Lodge said it has been just glorious to see all of this come together. She said if there is anything this Committee can do to help Ms. Field, please let us know. Substance abuse was the number one issue - really the only issue they wanted to see funded this year.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1 and 2].

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

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 20, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senator Bair

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Lodge** called the meeting to order.

BILLS:

HCR 39 Stating Findings of the Legislature and Rejecting a Certain Rule of the Idaho Bureau of Occupational Licenses Pertaining to Rules of the Board of Drinking Water and Wastewater Professionals.

Lynn Tominaga, representing the Idaho Rural Water Association, introduced Bruce Anderson.

Bruce Anderson, President of the Idaho Rural Water Association, stated that this concurrent resolution would reject a sentence in RS 17760 (pending), subsection 02 pertaining to the Rules of the Board of Drinking Water and Wastewater Professionals. The effect of this resolution, if adopted by both houses, would be to prevent the second sentence in the subsection of the agency rule from going into effect. This concurrent resolution has no fiscal impact.

Senator Darrington asked if this resolution puts in place a new rule or does it simply reject the old rule? He stated we cannot put a new rule in by resolution, we could by statute. **Mr. Tominaga** said HCR 39 deletes one line in the rule. The reason for HCR 39 is that this Committee, before they realized that there was a problem with the Rule, had already passed this rule. The problem was discovered in the House and Mr. Anderson is here to explain some of the problems with the rule that was adopted. **Senator Darrington** asked them to read the line being deleted. **Mr. Anderson** said in subsection 02 is Education and Experience Requirements. As passed, it stated "an applicant may not use the same experience for more than one license." He explained that in their field they

must be licensed for water and waste water. They want to delete that sentence.

Senator Werk asked if this would mean that in a place where one person takes care of both the water system and the waste water treatment system, you blend the hours for taking care of both of those things together in terms of licensure? **Mr. Anderson** stated that is correct. He said in a small system the operators are doing multiple tasks. **Senator Werk** asked is this a DEQ rule? Is there someone here to testify to the fact that there is a problem here?

Roger Hales, Attorney representing the Bureau of Occupational Licenses, said the Board of Water and Wastewater Professionals issues licenses to the operators of systems, whether it is a water system or a wastewater system. Sometimes those systems are combined. This Board and the Department of Environmental Quality (DEQ) have Federal oversight under the Clean Water Act, and the Environmental Protection Agency (EPA) oversees them and provides DEQ with some money pursuant to the Clean Water Act. There has been some concern expressed that EPA may not approve allowing someone to use the same experience for more than one license. But practically speaking, in Idaho, there are a lot of small water systems. The Board recognizes that it may need to provide some flexibility in dealing with the small systems and understands the concerns that are being expressed. The Board does not oppose HCR 39. They will meet with relevant folks to work through this.

Chairman Lodge said she has received several emails from small cities concerned that this will put them at a financial disadvantage in getting training for their people. **Mr. Anderson** said there is a problem in small communities in even finding help, much less in finding licensed help. It becomes a financial burden. Most of these are one person operations.

Chairman Lodge said what is a way for these small areas to comply? **Mr. Anderson** said that is still being worked on. There are still some problems that the Board and DEQ are working on. A lot of this is EPA rules so they have to work through this to provide the number one goal - safe drinking and waste water.

Vice Chairman Broadsword asked if Mr. Anderson has run the rejection of this section of the rules past DEQ? **Mr. Anderson** answered they haven't run it past DEQ, but have run it past Idaho Bureau of Occupational Licenses (IBOL).

Mr. Tominaga said he has been in contact with DEQ. They have some concerns, but it is not a pressing concern right now. They are planning to have a meeting of DEQ, Idaho Rural Water, and IBOL because it is DEQ that sets the regulations that IBOL has to meet. The penalty for DEQ is that they could lose as much as 20% of the revolving fund account money they receive from EPA. It is not a serious problem yet, but it will be because the State is short of qualified operators. There are not enough operators around to get the number of beginning entry folks into the system. The biggest problem is that in the small communities one person does many jobs. When you can't count the hours towards multiple licenses it can take five or ten years to accumulate 1600 hours for one

license. This needs to be solved.

Senator Hammond said those small systems are technically much simpler to operate than the larger, more complex systems. He said he is comfortable that they can develop a level of expertise necessary to assure quality effluent from the wastewater, and assure quality care in terms of the drinking water even by combining those hours. He asked if that is a fair statement? **Mr. Anderson** said that is a very fair statement and that is their position.

Senator Darrington said this is just about the most resolvable problem the Committee has dealt with.

Mr. Hales said he wanted to clarify for the record that it is actually the Board of Water and Wastewater Professionals, they are the ones responsible here. The IBOL is simply a support agency, it has no oversight of the licensing.

MOTION

Senator Darrington moved to send HCR 39 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Werk**. The motion carried by **voice vote**. **Senator Hammond** will sponsor this bill.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

H 388

Relating to Licensing of Nurses.

Judy Nagel, Associate Director, Idaho Board of Nursing, explained that due to previous renumpers, *Section 54-1401(2), Idaho Code*, contains a citation to an incorrect statute and the proposed legislation will amend that section to refer to the correct Statute. The proposed legislation will also amend *Section 54-1413, Idaho Code*, to clarify disciplinary grounds for misuse of alcohol and drugs, and add failure to comply with a board order, negotiated settlement or probationary agreement, or to pay fines or costs assessed in a prior disciplinary proceeding as independent grounds for additional disciplinary action. This proposed legislation will not impact the State general fund.

Vice Chairman Broadsword asked if this was an administrative rule last year and now it is being put in Code? **Ms. Nagel** said they may have done some of this in the rules but now feel it needs to go in the Code. **Vice Chairman Broadsword** asked if they have been having a problem with nurses not complying with their Board instructions? **Ms. Nagel** said occasionally they do. Their attorneys said that in looking through the Statute they didn't have the ability to take action if nurses didn't comply with the rules.

Senator Werk said a few years ago the Legislature freed nurse practitioners to practice on their own without oversight. If the Board doesn't have the ability to enforce their prior orders when a nurse might be operating out of the scope of their practice, that doesn't bode well.

MOTION

Senator Werk moved to send H 388 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Darrington**.

Vice Chairman Broadsword asked if the Board of Nursing oversees nurse practitioners, or is that the Medical Board? **Ms. Nagel** said the Board of Nursing oversees nurse practitioners.

Chairman Lodge called for a vote on H 388. The motion carried by **voice vote**. **Senator Werk** will sponsor this bill.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 2].

H 378

Relating to the Speech and Hearing Services Licensure Board.

Tana Cory, Chief, Bureau of Occupational Licenses, explained that this bill would change the expiration of Board member terms to expire on July 1 rather than the last day of the calendar year. It would also clarify that members are appointed by the Governor and shall serve at the pleasure of the Governor.

Vice Chairman Broadsword asked about the language - it says the Governor shall appoint members and their terms shall begin July 1, 2008. Do we not have a Board at this time, and he has to appoint a whole new Board? **Ms. Cory** said there is a current Board, but since this would go into effect the first day, that Board would serve until then and then the Governor could go ahead and put in a statement of terms that would match the July 1 date.

Senator McGee moved to send H 378 to the Senate floor with a do pass recommendation. **Vice Chairman Broadsword** seconded the motion. The motion carried by **voice vote**. **Senator Werk** will sponsor this bill.

MOTION

Vice Chairman Broadsword moved to approve the minutes of February 14, 2008 as corrected by **Senator Kelly**. **Senator Coiner** seconded the motion. The motion carried by **voice vote**.

RS 17933C1

Relating to Allowing Students to Carry Auto Injectors for Epinephrine Injections for Anaphylaxis.

**UNANIMOUS
CONSENT
REQUEST**

Senator Werk asked for unanimous consent to send RS 17933C1 to Judiciary and Rules. No objections were voiced.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:44 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 25, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senator Coiner

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED **Chairman Lodge** called the meeting to order and introduced Representative Sharon Block.

BILLS

H508 Relating to Substance Abuse.

Representative Block explained this proposed legislation which seeks to add or amend language within *Idaho Code Title 39, Chapter 3* to update definitions and procedures for treatment of substance abuse. There is no fiscal impact to this legislation.

Senator Darrington asked if these definitions are based on the Diagnostic and Statistics Manual of Mental Disorders (DSM) Federal Standard? Does this affect Federal support? **Representative Block** deferred this question to Bethany Gadzinski, Bureau Chief of Idaho Department of Health and Welfare (IDHW), Substance Use Disorder Bureau.

Ms. Gadzinski answered that the new definitions are from DSM 4 and the levels of care are from the American Society of Addiction Medicine (ASAM) manual which is what Idaho uses as placement criteria.

Senator Werk asked about Page 2 (9) which says "incompetent person" means a person who has been adjudged incompetent by an appropriate court within this state. For the purposes of definition, can a person be judged incompetent by a court not in this state? Are we putting ourselves in a box with this definition? **Ms. Gadzinski** replied that is what it also says in the mental health Statute as far as being able to involuntarily commit someone. She will need to get back to the Committee with the answer to this. **Senator Werk** said he would appreciate having her check

on this. He wants to make sure that the definition covers the range of probability. He would have preferred it to say "within a competent court of law" or something along those lines - something broader.

Vice Chairman Broadsword said if a person has been declared incompetent in another state, but their family chooses to transfer them to Idaho to be closer to home, do they have to go through another court proceeding to be declared incompetent in this State? **Ms. Gadzinski** said she doesn't know the answer to that question and will have to get back to the Committee with the answer.

Senator Kelly said barring Statutory language that would specify some other way, a court here would look at what had been done in other states, and if there was a proper court order in another state, the court would take that into account rather than starting from scratch. **Vice Chairman Broadsword** asked if "in this state" is needed in this definition, or would it be better to take those three words out? **Senator Kelly** said the Attorney General should look at that and make a decision.

MOTION

Senator Werk moved to send H508 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**. **Chairman Lodge** will sponsor this bill.

H376

Relating to Counselors and Therapists.

Roger Hales, representative for the Idaho Bureau of Occupational Licenses, stated that the purpose of this bill is to create a new licensed status for an Associate Marriage and Family Therapist . In 2001 legislation created a license category for Marriage and Family Therapists. The only difference between this new license category and the current Marriage and Family Therapists license status is that this new license category will not require the 3000 hours of supervised experience before licensure. The new licensee will hold this Associate license while obtaining the work experience required for the Marriage and Family Therapist license.

Dr. Cameron Preece, Licensed Marriage and Family Therapist representing the Idaho Association of Marriage and Family Therapists, stated he is also an approved supervisor, which means that he oversees the clinical and professional development of the registered interns that would like to receive the new designation of Associate Marriage and Family Therapists. He said they have close to 300 Marriage and Family Therapists practicing State wide, they have a strong functioning Board, two institutes of higher education - Northwest Nazarene University and Idaho State University - which have Masters level programs to train these professionals. He explained that when a student graduates from a university program, they first register as an intern. To obtain licensure they must get 3000 hours and an additional 200 hours of supervision before they can get licensure. Right now Medicaid and most insurance companies will not reimburse those who are registered as interns. The perception is that interns are still students. He read an email from someone wanting to become licensed who couldn't obtain a job as a registered intern. He said most mental health professionals have a progressive license with several tiers to it. This legislation will benefit the

citizens of Idaho by providing more family therapists. He requested the Committee pass this legislation.

Senator Darrington asked if the Associates license is equivalent to the licensed Professional Counselor, or is it a license that some would get as they work toward acquiring a licensed Professional Counselor? **Dr. Preece** answered in the Professional Counselor field there are two tiers. One is the Professional Counselor license and then there is a Licensed Clinical Professional Counselor. One can stand alone without supervision and get reimbursement. **Senator Darrington** asked if this is a step toward exclusivity with Marriage and Family Therapist licensure to where eventually a licensed Professional Counselor could not do marriage counseling but only a licensed Marriage and Family Therapist could? **Dr. Preece** answered that is not the intention. This does not address scope of practice in any way. **Senator Darrington** said he understands that, but is concerned about this progressing towards that exclusivity. **Dr. Preece** said that is not their intention. The Professional Counselors are requesting this. The Board has talked with the Associations and they are in support of this process as well.

Senator McGee moved to send H376 to the Senate floor with a do pass recommendation. **Vice Chairman Broadsword** seconded that motion.

Senator Werk commented that whoever sponsors the bill probably doesn't want to read the Statement of Purpose on the floor.

Chairman Lodge called for a vote on H376. The motion carried by **voice vote**. **Senator Bair** will sponsor this bill.

H375

Relating to Cosmeticians.

Mr. Hales explained that this bill will remove language which requires that the examination for licensure be conducted by the Board of Cosmetology to allow a third party examination administrator to conduct the examination. This bill will also remove language that requires the students enrolled in an Idaho licensed school to be registered with the Board.

Vice Chairman Broadsword said it seems to her that the Board would want to know how many students are registered and what the success rate for each school is to determine whether the schools are doing what they are meant to do. How will they track how many are registered and how many graduate? **Mr. Hales** said they have the ability to inspect the school's books and records and can learn that information directly from the records. If they determine that a school isn't doing a good job they have a recourse without this. **Vice Chairman Broadsword** asked how the Board is doing financially? Will they come next year saying they need to raise fees because they lost \$22,000 from not making students register? **Mr. Hales** said the Board of Cosmetology currently has \$90,000 and their yearly budget is \$42,000, so they have a year's revenue in advance. This Board does a good job with their finances.

Senator Hammond asked when the legislation says an examination conducted by a third party, could the school where they get their training conduct that exam or is it a third party from that as well? **Mr. Hales** said it

is conducted by a third party altogether. This Board has adopted the national exam by a rule and they would approve the third party examiner that is qualified to give that national exam.

Vice Chairman Broadsword asked if there are no consequences if a student does not show up for an exam? **Mr. Hales** said they have to pass the examination. There is no limitation on the number of times a student can take the examination other than the cost involved. **Vice Chairman Broadsword** asked if they have to take any additional training before they take the test? **Mr. Hales** answered that they do not. Most all of them would obtain additional training in the areas that they are deficient in, but there is no legal obligation. **Vice Chairman Broadsword** said they were doing it because it said in the Statute that they had to. Now you're taking that out, so will they continue to get extra training? **Mr. Hales** said there is no obligation for them to do so.

MOTION

Senator McGee moved to send H375 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Hammond**.

Vice Chairman Broadsword asked if it doesn't set out in Statute how much the fee is, how will the students know what to send in? This legislation takes out all references to fees. **Mr. Hales** said if they work through a third party administrator they will work with that administrator and pay them. If the Board continues to provide the exam, the Board will set the exam fee through its publications or its website. There is just one national exam and the information is readily available. **Vice Chairman Broadsword** asked if the Board administers an exam will they then come back with a rule that will set the amount since that has been removed from Statute? **Mr. Hales** answered the way the Statute reads, on page 9, says the fee for examination, when required, shall be equal to that charged by the national examining entity. So it will simply track what the national exam is.

Chairman Lodge called for a vote on S375. The motion carried by **voice vote**. **Senator Bair** will sponsor this bill.

HJM 6

To the President of the United States, To the Secretary of the United States Department of Health and Human Services, To the Senate and House of Representatives of the United States in Congress Assembled, and To the Congressional Delegation Representing the State of Idaho in The Congress of the United States.

Robert Vande Merwe, Idaho Healthcare Association, explained that this resolution would compel Idaho's congressional delegation and others to improve the federal survey process for skilled nursing facilities.

Senator Darrington asked if what they are really after is a push by Congress to the appropriate agencies to develop a survey that has to do with quality of care and not things that don't affect taking care of patients? **Mr. Vande Merwe** said that is what they are after.

Senator Hammond said it sounds like they want a little more than that. Instead of just saying it is wrong, the person doing the survey would actually be able to provide suggestions on how to make improvements to

concerns expressed. He asked if that is correct? **Mr. Vande Merwe** said that is correct. The Association respects the expertise of these surveyors, who have years of experience of knowing what to look for that is wrong, and they think they have something to offer the facilities. As it is now, the surveyors are not allowed to offer solutions. Also, the federal agency sends surveyors out to survey the surveyors to make sure they're being tough enough. It is a strange system and the Association would like to ask for it to change.

Vice Chairman Broadsword asked about line 33 on page 1. It inserts the Idaho Department of Health and Welfare in the middle of this Joint Memorial to Congress. She said she is wondering why they would ask the Idaho Department of Health and Welfare to be involved when they're asking for a federal agency to look into this? **Mr. Vande Merwe** answered that the way the surveys takes place is that the Department of Health and Welfare acts as a contractor for the government. They perform the surveys now, so it is an employee of the Department of Health and Welfare that will do the inspection. They have a lot of expertise that has built up over the years, so this shouldn't change.

Senator Hammond said this reminds him of a recent building project he went through. The inspectors came out and said something was wrong. He asked them how to fix it, and they replied they couldn't tell him how to fix it, they could only tell him it was wrong. This is the same thing happening with the surveyors here. It is frustrating and certainly doesn't serve the best interest of the clients in the nursing facilities.

MOTION

Senator Hammond moved to send HJM6 to the Senate floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**. **Senator McGee** will sponsor this bill.

H443

Relating to the Idaho Hospital Assessment Act.

Representative Fred Wood explained that this legislation will increase federal Medicaid funding by assessing certain private hospitals the amount necessary to match the federal funds available for reimbursement to private hospitals. These dollars will enhance existing below-cost reimbursement to hospitals, thereby reducing the losses hospitals incur when they treat Medicaid patients. Additionally, the mitigation of some of these losses will lessen the impact of cost shifting to private payers and insurers.

This legislation creates a fund to collect the assessments which are then used as the state match to access available federal funds. When the federal funds are secured, they are paid to the assessed hospitals based upon the number of Medicaid patients they care for within a given year.

This mechanism is allowable under federal regulations which set a limitation, called the "upper payment limit (UPL)" on how much state Medicaid programs can reimburse hospitals. Simply put, the limit is the amount Medicare would have paid for the same services. In Idaho, Medicaid reimburses hospitals less than Medicare, creating a gap between what is reimbursed compared to what could be reimbursed.

To otherwise increase reimbursement to hospitals, the state would need to appropriate additional state funds to leverage the federal funds. Through this legislation, private hospitals, not the state, will provide the funds necessary to obtain the federal funds.

Senator Darrington said there is not a downside to this legislation. He asked if Diagnosis Related Groups (DRGs) are still used as the index to set reimbursement regulations from Medicare to the hospitals?

Representative Wood answered that they are, and then deferred the question to Steve Millard. **Senator Darrington** asked if that is one reason why there is a significant gap between Medicaid and Medicare, because of the way DRGs are formulated?

Steve Millard, Idaho Hospital Association, stated that Senator Darrington is correct as far as certain size hospitals go. They are reimbursed under the prospective payment system. DRGs are a fixed payment for a procedure, for example, if the hospital does an appendectomy they get \$3000 regardless of what it costs. There are 26 hospitals in this state that are categorized as critical access hospitals - 25 beds or less. They all get cost reimbursed and their reimbursement is still below cost.

Senator Hammond said he wants to be sure he understands this. He said there is a gap between Medicaid and Medicare. This says we'll put up the 30% so we can get the other 70% to breach the gap. Is that correct? **Mr. Millard** said that is correct. **Senator Hammond** said last year there was a problem with some of the specialty hospitals. Are they okay with this and are they sure it doesn't create a financial problem for them? **Mr. Millard** said they are okay with it. The Association figured out a way to cut them out of this so they don't oppose this. **Senator Hammond** thanked the Association for making the effort to work out that problem.

Senator Bair said he found a small typographical error in the Statement of Purpose - URL should be UPL.

Vice Chairman Broadsword said Representative Wood has done a great job of carrying all the Health and Welfare Budgets.

MOTION

Vice Chairman Broadsword moved to send H443 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Bair**.

Senator McGee stated under Senate Rule 39H he declares he may have a conflict of interest, but he does plan to vote.

Chairman Lodge called for a vote on H443. The motion carried by **voice vote**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:58 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 26, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED **Chairman Lodge** called the meeting to order.

Chairman Lodge stated that she received a bill that should be in the Judiciary and Rules Committee. **Senator Darrington** said it deals with financial Power of Attorney and vulnerable adults.

UNANIMOUS CONSENT REQUEST **Senator Darrington** asked for unanimous consent that this be sent to Judiciary and Rules Committee. No objections were voiced.

Chairman Lodge welcomed guest speaker, Toni Hardesty, to the Committee.

GUEST SPEAKER **Toni Hardesty**, Director of the Idaho Department of Environmental Quality (DEQ) gave a presentation on DEQ highlights and issues of interest. She introduced Barry Burnell, Water Quality Administrator; Orville Green, Waste Administrator; and Martin Bauer, Air Quality Administrator.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1].

Chairman Lodge asked about the Preliminary Mercury Results slide. She asked what the dark orange dot in Southern Idaho on the State map represents? **Dir. Hardesty** said it is Salmon Falls and shows that Salmon Falls tested above average for mercury levels in fish tissue monitored there.

Senator Darrington asked that as the Environmental Protection Agency (EPA) moves toward setting a new standard for mercury, is it Dir. Hardesty's experience that when they do something like this, they rely

upon good, solid science, or do they rely upon a combination of science, paranoia and public opinion? **Dir. Hardesty** said that their mission and intent is to use good science, but if you look at some of the recent court decisions indicating that the court has not necessarily agreed that science was the driver in setting some of these standards. Like anything else, there is that check and double check sometimes, to determine what all the factors are going in. They also try to look at how to practically implement good science, and sometimes that is where people can have different perspectives.

Chairman Lodge asked if the mercury percentage for Lake Lowell is still high and if they have any idea of where it is coming from? **Dir. Hardesty** said Lake Lowell is an area where fish species were sampled and they were over the criteria. She deferred to Barry Burnell for which species tested high in Lake Lowell. **Barry Burnell** said they were bass.

Vice Chairman Broadsword asked if the Department is working with Idaho Fish and Game regarding posting that certain species should not be eaten and what will happen in those water bodies? If no harvest occurs, there will be an impact to that population. Do they have a plan of how to address it if there is no harvest? **Dir. Hardesty** said the Fish Consumption Advisory Task Force is made up of DEQ, Idaho Department of Fish and Game, and Idaho Department of Health and Welfare. These three agencies make the decision regarding listing of water bodies. The water bodies listed are fish consumption advisories. They don't say just don't eat the fish, they advise to limit the consumption of fish, particularly if you are an at risk population. Fish and Game has also posted something in the fishing regulations indicating that you need to check to see if there is a water body posting in the area.

Senator Kelly asked if there is concern yet? It seems that the more this is looked at, the more problems are found. **Dir. Hardesty** said obviously there is concern, that is why the Department is putting so much effort forward regarding the sampling and analysis throughout the State. She said there are a number of things happening in terms of how they respond. Advisories are first, so that people understand the public health risks and can make an informed decision. They are working with other states to identify and resolve regional problems. Everyone is having a hard time sorting out what percentage is global. **Senator Kelly** asked about the legislative moratorium that allowed no more large coal fired plants and is set to expire in April. What is the status of the DEQ rule? If a major coal fired plant was proposed for the State of Idaho sometime after April, what effect would that have in terms of the DEQ rule? **Dir. Hardesty** answered that the moratorium has no effect, if it expires or does not, on the DEQ rule. The DEQ rule in place right now does not allow any coal fired electrical generating units to be built in the State. That rule would remain in place until which time EPA, because their rule has been thrown out and they must decide how they will regulate coal fired power plants, comes forward with a proposal. At that time DEQ would determine what Idaho's response to that would be. But DEQ's rule is in place and is not impacted by the moratorium. **Senator Kelly** clarified that if a large merchant coal fired plant was proposed in Idaho right now it would not be able to be constructed or operated under the existing DEQ rules. Is that

correct? **Dir. Hardesty** answered that is correct.

Vice Chairman Broadsword asked regarding crop residue burning, if the Tribes are a part of this negotiated agreement, or are they a separate entity and can still do whatever they want to do? **Dir. Hardesty** said they are not a part of this agreement. They will have their own program. She said she is not aware of an agreement between Idaho State Department of Agriculture (ISDA) and the Tribe to not burn.

Senator Kelly asked if the Coeur d'Alene Tribe has been allowing burning during the season when there wasn't burning by others? **Dir. Hardesty** said that is correct. The Tribes were not impacted by the lawsuit whatsoever.

Senator Kelly said, regarding the Greenhouse Gas Initiative, that she just read something about Joint Finance-Appropriations Committee (JFAC) not funding the hybrid initiative. **Vice Chairman Broadsword** said in some of the agency budgets they were already purchasing hybrid machines, so JFAC took some of the funding out for this in outlying areas for financial reasons. **Senator Kelly** said but they burn less fuel. **Vice Chairman Broadsword** said it takes a long time to burn \$6000 worth of fuel if you're going to make up the difference, plus the cost of the car.

Vice Chairman Broadsword asked about the Ramifications of New Standards slide. Why does Pinehurst have higher PM2.5 pollution? It is more open, so you would think pollution would be worse elsewhere. **Dir. Hardesty** deferred this question to **Martin Bauer**. **Mr. Bauer** said it isn't that there is any larger pollution moving in, it is that nothing is cleaning out, so it builds up. That is why wood smoke is predominantly the issue. **Vice Chairman Broadsword** asked if it is because Pinehurst is at the mouth of the valley where the problem lies rather than back in where Wallace is? **Mr. Bauer** said Pinehurst is off by itself, so things move up and down the valley but gets stuck in the Pinehurst area.

Senator Werk asked if the ozone problem issues have to do with a wide range of things going on? The Stage 1 Vapor Recovery will remove some amount of volatile organic compounds (VOCs) from the air, but there are other things that contribute to this, and Stage 1 will not solve that problem? **Dir. Hardesty** answered that is correct. Ozone is formed primarily when you have nitrogen oxides combining with volatile organic compounds and you add sun light, heat. Stage 1 Vapor Recovery targets one of the sources of VOCs. Automobiles tend to be a very large source of what is in the Valley that contributes to the ozone. **Senator Werk** asked about why Ada County has emissions testing and Canyon County doesn't? He said he never understood this until someone explained that in the 1980's when there was a problem with large particulates, EPA drew a political boundary as the line for nonattainment at Ada County, so they made a political boundary rather than an airshed boundary. That is why Ada County does emissions testing and under nonattainment we keep doing emissions testing even after the problem is solved for decades because we have to monitor. **Dir. Hardesty** said that once you go nonattainment you must identify what the airshed is. The airshed is bigger than Ada County, it includes Canyon County and some other areas. Then

you determine what is the control strategy. Carbon monoxide tends to be a more localized pollutant versus ozone, which is a transport pollutant. When you have a more localized pollutant you can develop a control strategy that is maybe more narrow in size and scope and still solve that problem. An ozone issue requires a bigger size to control.

Senator McGee asked what voluntary steps Ada County took when this began to stop this problem?

Vice Chairman Broadsword asked referring to the Coeur d'Alene (CDA) Basin Cleanup slide, how will this yard cleanup hold up with the flooding that is expected this year because of this year's heavy winter snowfall?

Dir. Hardesty said flooding has always been a concern because it can destroy part of the remedy. They are trying to do the best they can within the confines they have to operate in. They are dealing with communities right now in snow removal and infrastructure issues (curbs, etc.). **Vice Chairman Broadsword** said she appreciates the help from DEQ for this area. She asked if there are plans in the works to retest areas that are affected by wash downs from untreated areas into treated areas caused by flooding? **Dir. Hardesty** said they will need to look at any recontaminated areas.

Senator Kelly asked about the CDA Lake Management Plan. She said the slide says DEQ will likely include a decision unit in next year's budget request for implementation of the plan. Is that all it will take? **Dir.**

Hardesty answered if it was only that easy. That is just a heads up that funding will be needed with the association of that plan. Part of the hold up has been money. This will need to be funded. **Senator Kelly** asked if there are estimates of what that will involve? **Dir. Hardesty** said this will include employees needed, monitoring costs, sampling and testing. It won't be until there is a final plan that the final costs will be known.

Senator Hammond asked if DEQ works with waste water plants and Total Maximum Daily Loads (TMDLs)? **Dir. Hardesty** said DEQ has the TMDL Program. DEQ does not have the National Pollutant Discharge Elimination System (NPDES) Program that sets permits for the waste water treatment plants. That is administered by EPA. **Senator Hammond** asked does DEQ plan any role in the NPDES permit? **Dir. Hardesty** said they issue a 401 Certification on the formal side that says the permit from EPA complies with all of DEQs water quality standards. **Senator Hammond** asked if DEQ is really setting the standards for TMDLs? **Dir. Hardesty** said that the TMDL document comes out of DEQ but has to be approved by EPA. **Senator Hammond** said what he is trying to understand is the role that DEQ plays when TMDLs are set by DEQ and then the cities of Coeur d'Alene, Hayden and Post Falls are also dealing with Washington State's Department of Ecology which is causing them to live with a different standard than what they would have to live with under just DEQ. His concern is these three communities who have to negotiate directly with another state department as well as with EPA. It seems to him that DEQ, as the State agency in Idaho, should be playing a role in helping these folks negotiate something that is workable for them as well. **Dir. Hardesty** said there are a couple of things that DEQ does. It works closely with the entities in setting the TMDL document. A complication is

that any time you have water flowing from one state into another state you have to meet the down state standards. That is where EPA often gets involved. DEQ works closely with those. It has been a problem to have the State issue the TMDL documents and not issue the NPDES permits. That is why there was a move to have the State take on primacy for the NPDES permit program. Ultimately the State couldn't identify a funding source to take on this program -it is a \$2.6 million program - and there was not agreement from all the parties. DEQ plays an informal role.

Senator Hammond said he understands all that but is asking that DEQ play more of an advocacy role. Those cities have all accepted that at some point they have to arrive at that standard, but now he understands that the window that they had originally agreed to has been shortened substantially as well. It is getting to be a huge cost factor for them because of this shortened period of time to reach this higher standard. They are kind of left out there by themselves and at least our chief department that deals with those issues ought to be playing a role in helping them get to where they need to be, but at a reasonable pace in terms of what they can afford to do long term. Frankly, when looking at the total daily load of that river they are still bit players. The City of Spokane's waste water is not meeting that either and they are 10 to 15 times the size of all the other three cities' contributions collectively. **Dir. Hardesty** said she hears Senator Hammond's plea and will follow up on this. From what she knows they have worked hard to try to support the cities within the confines they have. There is no dispute that the point source dischargers are often times a very small component of the issue.

Senator McGee asked Ms. Hardesty to supply him with information on Greenleaf and the waste water situation. **Dir. Hardesty** said she doesn't have that information now, but will be glad to get back to Senator McGee.

Vice Chairman Broadsword commended Ms. Hardesty on her daughter who visited the Committee last week.

Senator Darrington asked for a ten minute report from the DEQ to the Committee on the water pollution control account at some point in the future.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:19 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 27, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Chairman Lodge and Senator Kelly

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Vice Chairman Broadsword** called the meeting to order and welcomed guest speaker, Brent Reinke.

GUEST SPEAKER **Brent Reinke**, Director of the Department of Correction (DOC), talked briefly about the Secure Mental Health facility. He said he is in Committee because this is part of the permanent building council's budget setting process. They wanted to make sure that any questions the Committee might have are answered. He introduced Dr. Mary Perrien.

Dr. Mary Perrien first explained the Briefing Sheet distributed to the Committee. She then explained the Pathways to Admission handouts.

Vice Chairman Broadsword asked Dr. Perrien to talk about what is happening now without a Secure Mental Health facility. **Dr. Perrien** said there are 12 beds set aside in a housing unit within the Idaho Maximum Security Institution. This is a maximum security prison designed for containment, it was not designed for treatment. When civil commitment patients come there they are primarily maintained in their housing area or their cells. They spend a significant amount of time in their cells. The physical plant creates significant challenges for the doctors in providing the kind of treatment that these people need to improve their functional level and recover and return to a less restrictive environment. **Vice Chairman Broadsword** said when she was at State Hospital North a couple of years ago they were having trouble because they had so many civil commitments they didn't have room for anyone else. She asked if they are still experiencing that? **Dr. Perrien** deferred to Kathleen Allyn, Division Administrator for Behavioral Health in the Department of Health and Welfare (DHW). **Ms. Allyn** said it is true that both of the Department's State hospitals take essentially 100% involuntary commitments. Those can be either the civilly prompted commitments or those who have been

charged with a crime and need to be restored to competency. **Vice Chairman Broadsword** said her point is that sometimes dangerous people are being put in State hospitals with others when the 12 beds are full. Is that true? **Ms. Allyn** said that is correct. There are essentially three beds available at the DOC facility for commitments from the DHW. When those are full, the Department has to find a place to put folks who are pretty dangerous.

Senator Darrington said there are those who are going to complain about putting Health and Welfare commitments in a prison. He asked Dr. Perrien to address that. **Dr. Perrien** said in an ideal world she would not have Health and Welfare patients in one of the DOCs facilities. But today the Statute allows individuals to be placed into the custody of the DOC. There are some benefits and efficiencies to colocating the populations and staffing. Their focus is that if these people are allowed to be placed into their custody, please allow them to provide a facility that is appropriate for the treatment that they need and that includes security to ensure both patients and the staff that cares for them are safe.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 1 and 2].

BILLS

S1443

Relating to Allowing Students to Carry Auto Injectors for Epinephrine Injections for Anaphylaxis.

Senator Werk said the purpose of this legislation is to allow students in school to carry epinephrin auto injectors (epi pens) to save their lives in anaphylaxis or a severe allergic reaction. He said his daughter has a severe allergy to all nuts and nut products and said the severe reactions are very frightening and life threatening. They are only allowed to carry them if they have a prescription for it and have registered with their school.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3 and 4].

Dr. Murry Sturkie, DO, an emergency Physician, said he sees many people come into the emergency department in respiratory distress when they may only have minutes to live. Whether or not students having epi pens in their possession may mean the difference between life and death.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 5].

Senator McGee asked if this is different from the bee sting pen his brother used to have? **Dr. Sturkie** said it is essentially the same thing. **Senator McGee** asked if this will cover not only those who are allergic to nuts, but other allergies and conditions? **Dr. Sturkie** said it would.

Senator Darrington said he has been an asthmatic and for years carried

an inhaler, but he is not familiar with anaphylaxis. He asked how does anaphylaxis relate to asthma? **Dr. Sturkie** said asthma can be triggered by allergic reactions. He said a severe allergic reaction happens abruptly with airway closure where the blood pressure may drop. This is called anaphylaxis. The epi pen as an auto injector is the means to deliver adrenaline as quickly as possible into the system to help reverse that effect. **Senator Darrington** asked if an epi pen would work for a severe asthma attack? **Dr. Sturkie** said it would and they sometimes give epinephrine to severe asthmatics. **Senator Darrington** asked if the inhalers are not legal for kids to carry in school as well as the epi pens? **Senator Werk** said former Representative Kathie Garrett and he carried a bill together in 2005 or 2006 which allowed carrying inhalers. This bill will add to that Statute.

Tiffany Ahlefeld, a School Nurse with Meridian School District and the President of the School Nurse Organization of Idaho, said that the School Nurse Organization of Idaho and the National Association of School Nurses support this bill and feel that easy access to and correct use of epinephrine is necessary to avoid the life threatening complications of severe allergic reactions.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 6].

Vice Chairman Broadsword asked Ms. Ahlefeld if they have a plan that they have outlined to share with school districts around the State to address the other concerns? **Ms. Ahlefeld** said the School Nurse Organization of Idaho itself does not have a plan specific to the entire State. The district she works for does have a plan which they would be willing to share with any interested school district.

Lynn Wilson, Registered Nurse, shared that the Meridian School District has had a policy in place for three and one half years allowing their students to carry auto injectors and would be happy to share it.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 7].

Senator McGee asked if there is a scenario where a school district would not want to allow this policy? **Senator Werk** said the answer should be no, but the reality is that there are districts that are nervous about things and sometimes the decisions being made aren't based on the best needs of children susceptible to these kinds of reactions, but instead are based on other factors.

Senator Bair asked if there is any danger if a student jabbed his friend as a joke? **Ms. Wilson** said her understanding is that unless someone has a severe underlying cardiac problem, the small amount of adrenaline they would get might make them jittery, but it would not harm them physically. **Dr. Sturkie** said there are very few potential effects. If it were to get into a finger there could be changes in the finger, but the biggest result would be to make the heart race.

MOTION

Senator Hammond moved to send S1443 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Coiner**.

Senator Hammond said regarding Senator McGee's question, some districts are nervous and with this in place they will be much more comfortable in allowing this to move forward because it will afford them the protection that they need. **Senator Darrington** said the benefits of this far outweigh any risk.

Vice Chairman Broadsword called for a vote on S1443. The motion carried by **voice vote**. **Senator Werk** will sponsor this bill.

H389aa

Relating to controlled Substances Prescriptions Database.

Mark Johnston, Executive Director, Idaho Board of Pharmacy, explained that this bill is the result of negotiated rulemaking with the Prosecuting Attorney's Association resulting in the amendments. This legislation amends *Section 37-2726, Idaho Code*, which tasks the Board of Pharmacy with monitoring the controlled substance database. These rules furthered the use of this database to allow 24/7 access from authorized users. In that way an emergency room doctor, for example, could obtain the controlled substance records of a patient after hours. This information, while very secure, does put at risk people's personal records more than it did in the past. Because of that, they feel it is necessary to have a criminal portion of this statute for unauthorized users who knowingly obtain information from the system or authorized users who use it in an unauthorized way. The third addition to this Statute is that prosecuting attorneys would also be authorized users. They will not have 24/7 access.

Vice Chairman Broadsword asked Mr. Johnston to discuss the amendment. **Mr. Johnston** answered that the prosecuting attorneys wanted to be added as authorized users. Also, the original wording said it would be a misdemeanor to attempt to obtain, to obtain, or to misuse once obtaining the information. Attempting to obtain was not deemed a punishable crime so that was stricken. The last change is that the first clause was struck to eliminate some confusion.

Senator Werk thanked Mr. Johnston for sitting down and talking to him about security concerns for this database. He became very comfortable with the manner in which this system is being set up so that the personal information such as Social Security numbers, aren't involved at all. He feels this will be beneficial for the medical community.

MOTION

Senator McGee moved to send H389aa to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Werk**.

Senator Darrington said he would have no problem if unauthorized access was a felony, but it isn't. He said there are misdemeanors in Idaho Code that go up to \$10,000, so he has no problem with this being a heavy fine on the misdemeanor end of it.

Vice Chairman Broadsword called for a vote on H389aa. The motion carried by **voice vote**. **Senator Werk** will sponsor this bill.

ADJOURNMENT

Vice Chairman Broadsword adjourned the meeting at 3:40 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 3, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED:

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Lodge** called the meeting to order. She stated that **Senator McGee** has an RS for referral to the Judiciary and Rules Committee.

RS18016C1 **Senator McGee** said RS18016C1 is legislation regarding maternal deaths. He said Idaho is the only state in the Union that does not have a state wide review of maternal deaths. He and **Chairman Lodge** would like this legislation printed in Judiciary and Rules Committee, then be returned to the Health and Welfare Committee for discussion. **Chairman Lodge** asked him to explain funding of this legislation. **Senator McGee** said the requirement is that it be funded through private resources. The sponsor, Dr. Parsons, has assured them that he has a source for those private resources. So the fiscal impact to the State is zero.

Senator Werk asked if the idea this year is to simply print this RS?
Chairman Lodge said it is.

MOTION **Senator Werk** moved to send RS18016C1 to the Judiciary and Rules Committee to request a print hearing, and then return it to the Health and Welfare Committee. **Vice Chairman Broadsword** seconded this motion. The motion carried by **voice vote**.

MOTION **Vice Chairman Broadsword** moved to approve the minutes of February 25, 26, and 27, 2008. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

S1376 Relating to Daycare Programs (Hearing only)

Senator Tim Corder stated it is important to have this hearing to raise awareness of this issue. He said during the print hearing, **Senator Darrington** asked him to bring evidence to the Committee that this

legislation was actually needed. He said he did his best, but that is part of the problem. Senator Corder said he does have some court documents, but right now when these cases are prosecuted, they are prosecuted under Statute but there is no indication within those Statutes as to how many of them have to do with day care. That makes it hard to find evidence that there is a need for day care licensing, but it is one they intend to remedy in the coming year.

Another reason they asked for a hearing without a vote is because they discovered a couple of other problems with the legislation. One was that the fiscal statement was in error, and Michelle Britton will address this. Representative Saylor will address the other issue. They will address these flaws and bring this legislation back next year.

He discussed the two documents he distributed to the Committee describing recent abuses. He stated these alone would convince him of the need for licensure of day care facilities. He said there are other issues related to this legislation such as parental responsibility, educational standards, and consistency in data with the Department of Health and Welfare as the keeper; but protection of children is first and foremost.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1 and 2].

Chairman Lodge said that we also need to note that the case that happened in Buhl (Attachment 1) happened in a licensed day care, so injury can happen in licensed day cares too. **Senator Darrington** said this bill would not have prevented that particular incident, that is his point exactly.

Senator Kelly said the things Senator Corder talked about today regarding education and collecting more data seem to be things that can be done after implementing the proposed Statute. Certainly the fiscal note can be amended with a new Statement of Purpose, so was a fatal flaw found with the language besides these things? **Senator Corder** said there is a flaw that Representative Saylor will address, but he thinks there is a general uneasiness from this Committee and from the Legislature in general about this act. He thinks it is important that they resolve these issues. In his mind these aren't fatal flaws, but it is important to ease people's concerns. He said Senator Darrington and Chairman Lodge are correct, the example he gave was in a licensed day care, and it hit the newspaper because it was licensed. What about all those that don't hit the paper because they weren't licensed? That is the point to him. He said he hopes to gather more information and ease everyone's mind so when it is voted on it can be a strong, positive vote. Everyone needs to be convinced that this is the right thing to do.

Chairman Lodge said another point to clarify is that this facility was licensed, but the operator was not licensed. One of the things she would like to have looked at this year is do we need licensing for day care operators? The comment that has been made to her is if hairdressers are licensed, why aren't day care operators licensed?

Representative George Saylor said his primary reason for being here today is to keep this important issue in front of the Legislature. He said he will address the issues of prosecution and complaints, the costs associated with the bill, and finally the issue of the need for this legislation and the support that it has.

He said the information he has found has been difficult to find. He passed around the information he did find so that the Committee could look it over. These included four Court cases, information from the Health District in Northern Idaho, the Southwest Health District, the Idaho Prosecutor's Association, a list from the Department of Health and Welfare, a compilation from Health Districts around the State, and finally information from Idahosafechild.com. He said in talking to agencies they confirmed that information is difficult to find and when abuse is found, there is no enforcement language in Statute. So one issue that has been uncovered is that we need a central data registry.

Another issue with the legislation is the minimum number for licensure. This issue will be discussed and alternatives will be looked at.

He said he believes this issue is important and every parent and every child in the State of Idaho needs to be assured of safety in childcare.

Senator Hammond asked Representative Saylor what he is thinking in terms of changes to minimum numbers? **Representative Saylor** said he is personally comfortable with four as the minimum number. Last year the number he had was two but that was negotiated up to five. He said he is flexible and open to negotiation. If it is decided to only do criminal background checks on four and under, he is willing to do that. He feels it is important to keep this issue in the forefront. **Senator Hammond** said regarding fiscal impact, he feels if we are going to license, just issuing a license and then going away really doesn't do much to maximize the opportunity for safety for kids. If there isn't ongoing inspection he doesn't feel much has been accomplished. When he says the fiscal impact isn't reasonable, he is assuming that there will be regular inspections to assure an ongoing level of safety for those children. He said he doesn't know what that will cost, but we're trying to provide some assurance to the general public that if they choose to use a licensed day care, there is a certain standard being met. To do that we have to be sure that standard is being met or we aren't really doing the job.

Senator Werk asked if a parent who currently wants to do a background check of those who will be caring for their children can get that information? **Representative Saylor** said his understanding is that parents can ask the Health and Welfare Health Districts for information, but other than that it is difficult for parents to find information.

Michelle Britton, Administrator for the Division of Family and Community Services within the Department of Health and Welfare, said they are the division that has responsibility for State licensing. She said the Division certifies facilities with six to twelve children and licenses facilities of thirteen or more. It is a confusing system for many reasons. One is that there are a number of cities that do their own licensing so the Division

doesn't track any of their work. Many of them use Idaho Child Care Program (ICCP) monies but the Division has no oversight of those entities. There are six to eight municipalities in the State that actually do their own licensing. Within the Department are two programs - the licensing entity and the ICCP. In order to be an ICCP provider the provider must meet certain standards, have an inspection once a year, and if there are four children getting payment and that is the total number being cared for, there would be no requirement for a criminal background check. A number of people object to using public money for providers who do not have to have a criminal background check. Because the city does some licensing, Family and Community Services (FACS) addresses some of the issues about licensing, and then there is the ICCP, there is not a single place where all complaints get registered. Law enforcement receives complaints about a lot of abuse and neglect in facilities, but they won't necessarily contact the Department or ICCP to let them know.

The deal breaker with this legislation, she believes, was the cost to the Health Districts for the inspections. The Health Districts do not believe that they are being adequately reimbursed for the inspections that they do. Under the ICCP, the Department pays \$220 for a health inspection. Under licensing, the Department pays \$35 for an inspection. There are a number of providers who have ICCP and a license, but there are a number who just have a license. Code today for licensing limits the charge of all fees to \$100. In that list of fees the provider pays \$45 for a background check, \$35 for a health inspection, and \$20 for a fire inspection. That is the available money in Code. The Health Districts notified the Department that they opposed the bill, largely because of the cost related to health inspections. She has discussed this with some of the Directors, and where they are incurring their costs also has to do with how the city licensing affects their health inspection costs. So, some sorting needs to be done about what costs are attributable to what issue - the State licensing, city licensing or the ICCP. The Department has committed to the Health Districts to work with them in looking at their costs over the next year and they may have to make adjustments in expectations of inspections to make costs more reasonable. The Department will also be working with the ICCP so that internally, within the Department, they have a consolidated effort around the whole issue, so that they will have better information to provide the Committee next year about actual costs.

The recommendation that Chairman Lodge brought up of having providers licensed under the Bureau of Occupational Licenses was discussed and proposed a number of years ago as a way of having child care providers participate in oversight of their peers. One of the things she thinks is interesting about the last two or three years of proposals is that the provider community is actually coming forward and saying they need better regulation and more regulation than they have had to feel they are providing a safe service to children in their communities.

The Department has made a commitment to the Health Districts to work on providing better information next year and sorting out what their costs are associated with. If they have to, they may look at bidding this out to

another kind of provider to get inspections done at a reasonable cost.

Vice Chairman Broadsword said that Ms. Britton was in Coeur d'Alene when they decided to take up licensure. She asked for a brief synopsis of why they felt they needed to do that? **Ms. Britton** said they felt the licensing standards for the State of Idaho were inadequate. The Department doesn't go into a licensed facility without a complaint and they don't re-license except once every two years. They felt the standards were minimal, there was not a lot of enforcement, and they felt they could do a better job of licensing than the Department. Their number, in terms of who they cover with a license, is three or more. **Vice Chairman Broadsword** asked if Ms. Britton has an idea of what they charge and who does their inspections? **Ms. Britton** said she does not know. **Chairman Lodge** said Coeur d'Alene charges annually \$50 for license, individuals \$5 renewed annually; \$35 background check once, \$5 fingerprint fee once; \$35 license for Health and Welfare, Fire Department inspection annually; Health District inspection for food; background checks on all residents; facilities, owners, spouses and employees checked; CPR cards and TB checks; ongoing education requirements are eight hours of training; code enforcement officer is complaint driven. She said she has information of several cities if anyone is interested in looking at them.

Senator Hammond said if he was looking to the State to set a standard, that Ms. Britton just said they can't inspect after they issue the license, how much has been achieved by that other than a false sense of security? His concern is about the real cost to assure there is a safe and appropriate environment for children. We need to make sure that when a license is issued there are inspections to assure that level of care is provided. **Chairman Lodge** said it is probably just as dangerous as giving the providers a false sense of security that they won't have to be checked for a two year period of time.

Senator Darrington asked if we go to a bureaucratic, comprehensive day care licensure bill as proposed, what happens to the cost of day care to individuals in the jurisdictions that went from the basic State standard to the comprehensive, bureaucratic day care? **Ms. Britton** said she cannot answer that question. **Chairman Lodge** said maybe Ms. Britton can put this information in her report as well.

Karen Mason, Executive Director for the Idaho Association for the Education of Young Children, said they handle the provider eligibility part of the ICCP. They receive lots of complaints, but have no authority to respond to complaints and no enforcement ability. She believes they receive complaints because people don't know where to send them. They provide support and scholarships to improve quality in programs. They are concerned about facilities that don't provide learning for children. She believes licensing is extremely important as the foundation for moving on to that next step of quality. There are a lot of great programs, but the ones who aren't asking for help are the ones that are not going to follow regulations unless forced to. This is not comprehensive or huge, it is minimal.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 3].

Senator Werk said what is most disturbing to him is hearing either too much or too little. He said he feels we need to make a start. This issue has been around the Legislature for several years now. As a co-sponsor, he didn't agree to a hearing without a vote. He said he didn't know about this being just a hearing of this issue until today. He said no one can provide the Committee with what the Committee wants because what they want is contradictory. He said we need to find a middle ground, but finds it frustrating to have a hearing with no vote. He does appreciate having some sort of a discussion on this issue.

Senator McGee said the sponsor of the bill said he thought the Chairman was doing the right thing by not voting on this bad bill. So the Chairman is doing exactly what the sponsor of the bill asked her to do.

Senator Darrington said the Chairman made it very clear in the posted agenda that there would be a hearing without a vote. Having a hearing without a vote is not at all unusual and is the call of the Chair. He said he supports the Chair.

Chairman Lodge said she will hold this bill in Committee.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:05 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 5, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senator Coiner

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Lodge** called the meeting to order and introduced Representative Ken Roberts.

H 557 Relating to Crop Burning

Representative Ken Roberts brought to the attention of the Committee, letters of support for H 557 from Governor Butch Otter and various other organizations. He then explained the sections of this bill to the Committee. This bill repeals the Smoke Management and Crop Residue Disposal Act administered by the Idaho Department of Agriculture and creates a new statute providing the Department of Environmental Quality (DEQ) with the authority to administer the open burning of crop residue. The proposed legislation requires approval from DEQ prior to the burn and prohibits DEQ from granting that approval if it determines that ambient air-quality levels exceed or are projected to exceed 75% of the level of any national air ambient air quality standard on any burn day or 80% of the one hour action criteria for particulate matter under *IDAPA 58.01.557*; and it sets a \$2.00 per acre fee for burning.

Vice Chairman Broadsword asked what 75% of the national air quality standard is and is that attainable? **Representative Roberts** deferred this question to Director Hardesty.

Representative Roberts said Section 3 deals with the transfer of \$209,000 to the General Fund from the Department of Agriculture's Smoke Management Account. He said the enactment of this bill will have a one-time initial start up expense of \$186,700 for purchase of equipment. Ongoing program costs are estimated to be \$419,700 for a total impact in the FY 2009 budget of \$606,377. This will be offset by the \$209,000 from the Smoke Management Account for a net fiscal impact in FY 2009 of

\$397,377. The \$2 per acre fee that will be collected for burning will offset the \$397,377. They don't yet know how many acres will be involved in this program, so they aren't sure if this will offset the total cost. The intention of this legislation is to get to a starting point and to change that fee if it becomes necessary.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1].

Vice Chairman Broadsword said there used to be a per acre fee to burn in the north, is this a repeat of that? It seems to her the folks in the south have not paid that, just the folks in the north. She asked Representative Roberts to comment on that. **Representative Roberts** deferred these questions to Director Gould.

Senator Hammond asked about page 1, line 30 where it states "of any national ambient air quality standard." **Representative Roberts** deferred this to Director Hardesty.

Toni Hardesty, Director of the Idaho Department of Environmental Quality, expressed her appreciation to all the parties involved in this legislation. They worked very hard. She stated this is the first of three steps needed in order to have an approved program in the State. The legislation is the first, approved rules are the second, and then a submittal and approval of the implementation plan will be the final step.

Regarding the ambient air quality standards, she said the pollutants they focus on for crop residue burning are particulate matter. The PM2.5 standard for 24 hours is 35 micrograms per liter cubed, so 75% of that is roughly 26. If pollution exceeds that number it meets this criteria and the DEQ would not be approving burns. The second part of Vice Chairman Broadsword's question was is that achievable? Director Hardesty said it isn't always achievable. There will be days when it is higher than that and burning would not be allowed on those days. The program is set up for the DEQ to make daily burn calls - people will register to burn, the meteorologists will look at the information and take measurements from the on-sight monitor and will make determinations on a day by day basis as to whether that is a day the farmers can burn.

Vice Chairman Broadsword said there were 23 new air monitoring stations in Director Hardesty's budget and two or three of those were mobile. She asked if the plan was to have those mobile monitors on-sight when a burn is about to take place? **Director Hardesty** said the monitors they will be purchasing for this program will be mostly mobile monitors, but these are different than the three they had for the fire situation in the region.

Director Hardesty replied to Vice Chairman Broadsword's question about the fees. She said there was a fee before, but it was collected in Northern Idaho. The fee in this legislation will be collected State wide.

Senator Hammond asked about the ambient air quality standard in the legislation referred to as "any national ambient air quality standard." He

asked why this wouldn't reference a specific ambient air quality standard? **Director Hardesty** said that the language they used, while it references any air quality standard, there are those particular standards that they are looking for and will be monitoring relative to the burn that they are most concerned about. They put any ambient air quality standard in this, but really it is particulate matter and ozone that they are concerned about.

Vice Chairman Broadsword asked if, by leaving it at any national ambient air quality standard, doesn't that give the ability, if another contaminant comes out in the future, to be able to monitor for that as well? **Director Hardesty** said she wouldn't be concerned about that because this is talking about crop residue burning so if that activity doesn't result in that pollutant then it wouldn't be relevant.

Senator Bair said he lives in Southeastern Idaho and they burn about 500 acres every year. This is a very important part of their farming practices. They have trouble finding a day to burn when the wind isn't blowing because, of course, they worry about hot embers drifting. He asked, in Director Hardesty's opinion, will there be enough windless days that still provide clean enough air to get the burning done? **Director Hardesty** said in their preliminary look at both Northern and Southern Idaho they believe there will be plenty of opportunities for burn days.

Senator Bair asked if the two criteria in subsections a and b referring to ambient air quality standards, will there be enough days available to them that they can burn in a timely manner? **Director Hardesty** said that is their hope. This is a brand new program and they will learn a lot as they go through it. There are things that are out of their control such as wild fires - it's hard to predict how long the smoke will come and the area it will impact. They certainly think that there will be ample opportunities for people to burn their fields based on the conditions they have laid out. People will need to be flexible and willing to move to a different day if the conditions are not right. **Senator Bair** asked if there are penalties associated with burning when burning isn't allowed? **Director Hardesty** said DEQ's standard penalty provisions would apply if there are people who burn either without registering or on days they don't have permission to burn. The DEQ would then issue notices of violation and penalties as appropriate. They recognize that this is a brand new program and have planned as part of the program to do outreach and education, particularly in Southern Idaho where this is a brand new program and people aren't used to having to register and pay a fee. **Senator Bair** asked what those penalties will be? **Director Hardesty** said it is \$10,000 per day per violation and that would be adjusted accordingly based on the circumstances.

Vice Chairman Broadsword said it specifically mentions blue grass in the Statement of Purpose, but today Director Hardesty is talking about alfalfa stubble burning and others; please talk about that. **Director Hardesty** said this legislation covers any crop residue whether it is grass, grain, etc. Blue grass was specifically called out because one of the key negotiating principles was the fact that if there was more than the 20,000 acres of blue grass burned, there needed to be some additional air quality evaluations done.

Senator Bair explained that occasionally hay or straw bales get broken in the field and become of no value. The current practice is to burn those bales in the field. Will they be fined if they do that? **Director Hardesty** deferred to Martin Bauer to answer this question.

Martin Bauer, Air Quality Administrator, DEQ, said there are rules of open burning and this would have to be in compliance with those rules. If it falls under crop residue disposal it will have to follow those rules. He said they can burn those if they do it in compliance with the law. **Senator Bair** asked if he needs to get a permit to burn a broken hay bale? **Mr. Bauer** said if it falls under this statute and is residue that was left on the field, then yes, it will have to go through the process in this legislation.

Senator Darrington said he was ready to vote for this bill until Senator Bair raised that question. He said he can find no reference in this legislation to someone burning a ditch bank, a fence line, or a pile of weeds. It doesn't apply unless there is a local restriction. Is that correct? **Director Hardesty** said that is correct. There are specific allowances for ditch bank burning and those kinds of things. **Senator Darrington** said straw has great value now because you can sell the bales for \$65 per ton. But, the best way to get rid of a straw bale out in the field is to take the disc out, disc around it, light it on fire, and it is gone. He said what he just heard is that this would be in violation of the open burning rule if that is done. There is a potential \$10,000 fine for cleaning up a mess, and the only other way to clean it up is to haul it into the yard and burn it in the yard with the weeds. **Director Hardesty** said she has a clarification. Crop residue means any vegetative material remaining in the field after harvest, or vegetative material on designated conservation program lands. So, if it is not in the field, she would say it is not crop residue. **Senator Darrington** said so he could haul it to the yard, throw a tumbleweed on it and burn it up. He asked what is the difference in the harm between burning the bale out in the field, or hauling it into the yard and burning it with the tumble weeds? One is legal, one is illegal. **Director Hardesty** said the intent of the legislation was not to regulate down to that issue. What she doesn't know, and maybe they can look at, is whether this can be addressed in the rulemaking portion of this process. **Senator Darrington** said not very many big bales are broken, but it isn't easy to haul away when one is broken. **Senator Hammond** asked if it isn't possible that we're talking about two different things? Burning a field falls under DEQ, burning a bale falls under the county burn regulations. **Senator Darrington** said he doesn't think so.

Lisa Krorberg, Deputy Attorney General, Attorney General's Office, said the language of Section 39-114 came directly from the existing Smoke Management Act and Crop Residue Disposal Act under the Department of Agriculture. The purpose of the act is to burn crop residue. Regarding the situation being discussed now, the DEQ has, as part of its State Implementation Plan, air quality rules that are part of our open burning rules. Under those rules are specific allowable forms of open burning. The weed control, ditch bank situation is in there. There is no specific provision for hay bales under those rules and there hasn't been for 14 years.

Senator Bair asked if a hay bale is defined as residue, or is that a crop that is taken off the field?

Celia Gould, Director of the Idaho Department of Agriculture (ISDA), said she isn't sure that is truly defined anywhere, but clearly, through rulemaking, they are talking about open burning. She said the bottom line is one year ago they never dreamed there would be an opportunity to give burning to the agriculture community this year. It didn't seem like a remote possibility. This has come a long way. If we start changing the language in this bill we have to go back to negotiation and eliminate any hope of burning for the agriculture community this year. It is essential to the agricultural industries to have this tool in the tool box this burning year for pest control and for yields. She said, with all due respect, please trust that these details will be taken care of by DEQ and ISDA working hand in hand.

Senator Darrington said he takes comfort in both Directors. He said he knows what went into this and it is massive. He asked what happens if a farmer's combine burns down in the field? This happens every year because the chaff gets very hot. Can this be handled administratively with the farmer, or does he have to go to court to handle it? **Director Gould** said she has been told it is handled administratively and then there is an investigation to see what effort is put into control. Obviously, there are some judgement calls that must be made in any investigation, but it would be the hope of the ISDA that the agricultural community would control those fires so they don't put the DEQ in a difficult situation. **Senator Darrington** said the reason he and Senator Bair have pursued answers to these issues is that farmers may be a little more suspicious of the bureaucracy than the agencies are of each other. **Director Gould** said one of the things that is a concern of ISDA and DEQ is that because of the delicate nature of the negotiation process they have not been able to tell the story and illustrate what they have been through this last year and what was at stake had they not negotiated the legislation before us. So constituents may see this as something that is out of the blue; they don't understand that absent H 557, there is no burning. ISDA and DEQ have a lot ahead of them to tell the story and try to bring constituent and Legislator comfort levels up in this.

Vice Chairman Broadword asked Senator Bair if he burns the field after he takes the hay off the field? **Senator Bair** said you never burn a hay field. The type of burning they do is for blue grass or wheat or barley stubble. A hay bale left in the field on which the string breaks results in a huge mess and there is no easy way to clean it up. The easiest thing to do is burn it.

Senator Werk said he wants to get a clearer understanding of fiscal impact. The legislation says the fiscal impact is \$186,700 and he doesn't know where that comes from or who is paying it. Do we have any idea how many acres are being burned? He said he would fully expect that this program should pay for itself and not be a child of the General Fund. He is trying to find out what the \$186,700 is about, and with the \$2 fee, whether or not we have reason to believe it would be adequate. **Director Hardesty** said in coming up with the fiscal impact they sat down and

figured out what it would cost them to run this program. Those were the numbers that Representative Roberts put forward earlier - ongoing costs of \$419,700 per year, one time costs for the first year of \$186,700, and the fiscal year 2009 of \$606,377. That will then be offset by the money moving over from the ISDA fund that was not used, and anything collected in fees for burning. That is the hardest part, calculating exactly how many acres are going to be burned. She said as you know, they have had a program in Northern Idaho, but not in Southern Idaho, so it is a little bit of a guess as to how many acres will be burned in Southern Idaho. The number is probably somewhere between 100,000 and 200,000 acres. At 200,000 acres the program will break even; at 100,000 acres it will come up short. DEQ's recommendation was that it will take a while to sort through that number, but they will know that number after a year or two of burning. At that point it may be appropriate for the Legislature to look at the fee to see whether the acreage that was expected to be burned is, in fact, burned and whether it is funding the program.

Senator Werk said what he wanted to get on the record is whether it is the intent of all the parties involved that this program pay for itself, including staff time, and not be a child of the General Fund. Is that the intent, or will you be coming back, if needed, for an increase in that fee to ensure that the General Fund doesn't have to cover this? **Representative Roberts** said that, not only from the income side are there some unknowns yet, there are also potentially some unknowns on the expense side. He said he believes it is the intent to substantially offset the cost of the program. He believes there is significant interest for the population of the State of Idaho to have a good grass seed industry in the State, and a good agricultural industry in the State because as those industries are successful it is a benefit to all the citizens of the State because of the environmental protection it offers the land, jobs it provides, and also the substantial income it provides for the State coffers. Because of this, he believes there could be a case made for this program being somewhat supported by the General Fund in the State of Idaho.

Senator Werk asked if the Committee were to reject this bill, what would happen? **Representative Roberts** said first of all, the parties that have been working hard on this issue would be in somewhat of a disarray as to what to do next. Also, one of the reasons this bill was brought forth in a timely fashion is to get this in place so that the rules can be put in place so this can be used for this season. If the bill is not supported they have to turn back to the industry and ask them where to go, and they will then turn to the Legislature and say where do you want this to go?

Senator Bair asked if he, as a grower, contacts the Department, fill out the applications, pays his \$2 per acre fee, communicates with the Department and is given a date and time frame in which he can burn, does exactly as directed, is he, to some degree or another, protected against nuisance lawsuits from citizens who just plain don't like burning? **Ms. Krörberg** said there is a provision specifically in the statute where they reference *Idaho Code 52-108*. That is the *General Nuisance Provision* in Idaho law. Basically what this statute says is so long as something is statutorily authorized, the act cannot constitute a nuisance. So, yes, Senator Bair would be protected.

Senator Werk asked Director Hardesty if she will provide the Legislature with a full accounting of the costs, fees collected and what the balance is at least for the first two to three years so that the Legislature can understand what the costs are and whether or not the costs are being covered? He asked if she is willing to commit to that? **Director Hardesty** said she absolutely will commit to that. They will be tracking that information closely regarding expenditures, acres, fees collected and will be glad to report to the Legislature on that.

Vice Chairman Broadsword said Director Hardesty stated she was going to put the money from the Smoke Management Fund into the General Fund, but isn't it going to be transferred from one account to another from ISDA to DEQ and not necessarily a deposit to the General Fund? **Director Hardesty** said no, it will not. It will go into the General Fund. That is because they don't know how many acres are going to be burned, so they couldn't ensure that there would be enough money to fund the program. The program will be funded out of the General Fund and then, when they collect the receipts from the fees, they will transfer them back into the General Fund.

Patti Gora, Director of Safe Air For Everyone (SAFE), said SAFE supports this bill. They negotiated with all interested parties on H 557 and believe it represents the best way for the State of Idaho to move forward on this issue. SAFE believes this bill provides key protection for public health for the most vulnerable citizens in Idaho.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 2].

Vice Chairman Broadsword said with the Smoke Management Act they had some agreements with ISDA that folks wouldn't burn on weekends, during the festival and things like that. She asked if those things were addressed in SAFE's negotiations? **Ms. Gora** said they were. The legislation is clear that there will be no burning on weekends or holidays. She couldn't speak specifically to the Sandpoint Festival, but the Department is now charged with considering any sensitive receptors, and if smoke is coming to protected areas such as hospitals, they cannot approve the burn if the smoke will impact those areas. So the impacts will be much lower than ever seen before, and they should not be causing injury or harm.

Vice Chairman Broadsword asked Director Gould how many acres of blue grass fields have been lost to development during the loss of burning? **Director Gould** said she isn't sure she can answer that because she doesn't know that we can necessarily say we lost acreage at this point in time. She said certainly there are houses on a lot of those acres but she isn't sure that is a direct result of the loss of burning in the year's time. She knows there has been a transfer of some acreage from off reservation to on reservation for blue grass.

Senator Kelly said we are going State wide with field burning requiring a daily monitoring of weather and a daily judgement call. This has been hard enough to manage for just part of the State; how will this work State

wide? Will DEQ have to add full time employees (FTEs) to do this? **Director Hardesty** said they will be adding two FTEs and some seasonal workers during the burn season. In addition, they will increase the amount of time needed for contract meteorologists. **Chairman Lodge** asked if all of this is included in the costs in the Statement of Purpose? **Director Hardesty** said that is correct.

Senator Werk asked if DEQ is adding staff, is the ISDA subtracting staff? **Director Gould** said the IDSA has already reduced its workforce. That is why there is \$209,000 that will be transferred to the General Fund. When they found they weren't going to have a program, they cancelled everything.

Darwin Olberding, Representative for Idaho Grain Producers Association, said he has been involved in this negotiation and the Association feels very comfortable with this legislation. He said there may be some tweaks to be done next year. He said they realize that the acreage burned will fluctuate from year to year. The Association urges support for this bill because the alternative is another year of no burning for the growers.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 3].

MOTION

Senator Bair moved to send H 557 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Darrington**.

Senator Darrington stated this is very important legislation. It involves a huge amount of work. He said Senator Bair and he were playing the devil's advocate for a good reason, because there will be some growers in their Districts that won't be happy paying \$2 per acre. There will be a little political fallout on this, but as rural areas become more urban, it necessitates the development of this kind of legislation to be able to coexist in our agricultural communities.

Senator Werk said he congratulates the parties involved in this and recognizes the work involved. However the one thing that really bothers him about this legislation is the funding. He doesn't believe this should be a child of the General Fund. This should be a fee based program paid for by the users. Putting money from the fees collected into the General Fund (as stated on page 2, sub 4), really says that we don't want to set up a separate account for this. This program enters mixing these funds with the General Funds, which is unnecessary. He said he will support the motion, but has a real issue with starting down the road of General Fund support and having his constituents support the burn program. He hopes that DEQ will get the needed accounting, make the adjustments, and then set up a separate crop residue burning fund to be used as a separate dedicated fund to make sure all these costs are covered.

Chairman Lodge said she would be concerned if the rural citizens never helped do anything for the urban areas. But, the rural citizens have been helping support the urban areas as we try to help each other. This is just the beginning of this program, and maybe it will need some tweaking as it

continues, but it is very important that we get started. Some of these issues can be dealt with as we go along.

Senator Bair said growers benefit, but this legislation comes about to protect urban society as well. Urban society and cities are stakeholders in this and they may even have a responsibility there as well.

Senator Hammond said as one who lives in an area where one of the wars occurred, he is happy to have some of his money go toward making this work. He said, quite frankly, he didn't want to fill that prairie with homes. If we can keep it agricultural, there are environmental concerns that this will address, but it also helps the greater quality of life for our areas if we can keep it rural and keep it agricultural. He said he isn't necessarily saying there is a right or wrong here, but there is something to be said for some of his contribution as an urbanite to that rural lifestyle which serves him as well as it serves them.

Vice Chairman Broadsword said she wants to commend the parties that have come together, sat down and worked out an agreement that everyone can live with. This is a giant step forward. She said, regarding the General Fund, that the Smoke Management Plan, when it was only paid for in Northern Idaho but they monitored in Southern Idaho as well, was coming out of the General Fund too. She stated this isn't something new; they have been paying.

Chairman Lodge said she wanted to express her thanks as well. She has heard about this issue in her household for years, and it is kind of interesting to be on the closing angle where this will be solved.

Chairman Lodge called for a vote on H 557. The motion carried by **voice vote**. **Senator Bair** will sponsor this bill.

Chairman Lodge asked for a volunteer to serve on a group with the Public Health Districts to look at changing the fees charged for food establishments in the Food Safety Inspection Program.

Senator Werk said he doesn't know exactly what is happening in the House with the Naturopath bill, but if it doesn't go through on the House side, he reminded the Committee that they have a bill to repeal the entire statute that should then come out because the current status quo will only produce more conflict.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:10 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 10, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly
- MEMBERS ABSENT/ EXCUSED:**
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- GUESTS:** See attached sign-in sheet.
- CONVENED:** **Chairman Lodge** called the meeting to order and introduced Amy Holly-Priest for today's presentation.
- PRESENTATION** Update on Mental Health Issues - the Cost and Benefits
- Amy Holly-Priest**, Director of Government Contracts and Public Affairs, Business Psychology Associates (BPA), introduced Dr. Mark Snow, BPA's Clinical Director, Sarah Woudley, President of BPA, and Sandy Colling, Sales & Marketing Account Support, BPA.
- Ms. Holly-Priest** said BPA works with the Department of Health and Welfare's substance use disorder contract and Medicaid's Mental Health Provider Credentialing Program. She is here today to give an update on the Mental Health Parity pilot program for State employees. BPA is a subcontractor for Blue Cross of Idaho.
- She explained that HB 615 created a pilot program to allow the State to establish the real costs and benefits of including mental health coverage in group health coverage so the Legislature could evaluate the effectiveness of the legislation in stabilizing healthcare costs associated with untreated mental illness.
- In preparing this legislation, the Legislative Services Office (LSO) conducted extensive research on the prevalence of mental illness in Idaho, finding that more than 5% of Idaho children are diagnosed with serious emotional disturbances, 1% of Idahoans suffer from schizophrenia and that 90% of all persons who commit suicide have a treatable serious mental illness. The LSO also found that treatment works. Of people diagnosed with depression, 70-80% respond quickly to treatment. Of people with schizophrenia, 80% are relieved of acute

symptoms with medication.

Ms. Holly-Priest introduced Dr. Mark Snow to present clinical and case management information.

Dr. Snow said he is here to talk about the Parity benefit. Employees for the State of Idaho have mental health benefits. The standard mental health benefit is composed of the Employee Assistance Program (EAP), eight inpatient days and 30 outpatient visits. This was the limit of mental health benefits before Parity.

Parity assures that we can provide the same benefits for mental health problems as those provided for medical problems. To qualify for Parity adults must have a serious mental illness, and people under 18 must have a serious emotional disorder. The number of people who need this benefit is small, but they need it. Ninety percent of people can be treated with the standard mental health benefit, but some people need the Parity benefit. BPA tries to identify those people as early as possible. Anyone entering an inpatient facility for a mental health problem is immediately concurrently reviewed to see if they qualify for Parity. He said last year 111 individuals qualified for Parity.

When someone qualifies for Parity, BPA immediately begins case management. They work very closely with Blue Cross of Idaho. The clinical staff reviews the care a Parity patient receives weekly. BPA coordinates the care of the individual with physicians and with community services. This offsets a lot of unneeded medical care. Out of 17 cases they worked with Blue Cross of Idaho on, they documented over \$100,000 of savings because now when a patient has a problem they don't run to the emergency room. - they go other places for care. As an example, he told the success story of a patient they tested and coordinated care for. What they try to do with managed care is make sure patients get medically necessary, appropriate care and evidence shows that this is the cheapest care that can be provided. So the goal is to identify people, manage their care to make sure they get appropriate care and are getting treated, and then get them functioning and back in society.

Vice Chairman Broadsword said it was her understanding that Parity was only for State active employees and their dependents. She asked about the patient with the success story he talked about. She asked how did she fit into that? **Dr. Snow** said she was a dependent and the Parity Program was for dependents of State employees as well.

Ms. Holly-Priest said offering more mental health services has cost the plan more. However, the actual results of the first year of the pilot program are promising. The actual cost increase was \$907,981 or 0.7% of the total plan costs, much less than the \$1,890,000 or 1.8% estimate.

The results of the last 18 months show that outcomes and quality of management are achieved through strong partnerships between the medical payer and the mental health expert.

Senator Werk asked about the cost avoidance part of the program results. He said part of that could be the decrease in lost workplace time.

He asked about consistent assessment - how do we provide consistent assessment across the State? **Ms. Holly-Priest** said the last time issue is a good one because that should be accounted for, but it is difficult to do because you have to share information directly with the plan about specific employees and their utilization trends. It is not being directly addressed right now, but could be. **Senator Werk** said if there was an impact on the employee population in providing Parity services we could track the macro trends - how many lost hours are there per employee - some impact would be seen without having to track specific employees. **Ms. Holly-Priest** said there probably is a way to do that. **Senator Werk** requested of Chairman Lodge that, if there is a need for the Legislature to be involved in making the request for the kind of data that is needed for this, perhaps the Committee should try to be involved in this. **Dr. Snow** addressed the consistent assessment part of Senator Werk's question. He said they use the Diagnostic Statistical Manual from the American Psychiatric Association for assessment. There are specific behavioural criteria people must meet for classification. To access the Mental Health Parity they must be diagnosed with one of those specific diagnoses by either a psychiatrist or with neural psychological testing. Because of the criteria they use, the reliability is fairly high. The diagnoses that qualify for the Parity benefit tend to be those with a biological basis that need to be treated with therapy and psychotropic medication.

Senator Coiner asked if the direct out of pocket cost was half of what was projected? **Ms. Holly-Priest** said the direct out of pocket increase was a little less than half of what was projected. **Senator Coiner** asked if we have a way of tracking the cost avoidance of these people? That number isn't showing up in this report, is it? **Ms. Holly-Priest** said it isn't showing up here. Cost avoidance is being tracked at the individual level right now, and the ability to do that has improved over the last 18 months. The way it is being done now is a fairly conservative estimate at the individual level based on actual services not being rendered. At this point the range is several \$100 to \$10,000 - \$12,000 per individual. BPA has not done a trend on this yet, but will do that after they have gathered more data. **Senator Coiner** said that basically the message is that this program looks promising and more data will be provided in BPA's next report? **Ms. Holly-Priest** said yes, and for the next report they would like to have all three partners at the table - Blue Cross of Idaho, the Office of Group Insurance and BPA for a full report. **Senator Coiner** asked if next year would be a good time to have the meeting? **Ms. Holly-Priest** said if they plan for it, but it may be best to have it for the summer session and have it through the Health Care Task Force or the Mental Health Sub-Committee.

Vice Chairman Broadsword asked about the Mental Health Parity Pilot Program report from Blue Cross of Idaho, the chart on page 8, on the number of mental health providers per capita, are there no State employees in Camas County? Is that why there are almost 91 providers per capita? **Dr. Snow** said there is a definite shortage of mental health providers in the State of Idaho and specifically in rural areas. One thing they're looking at is a centralized telemedical to enable psychiatrists see people in outlying areas, but centralized with the State. **Vice Chairman Broadsword** said the Committee just adopted rules to approve

telemedical.

Senator Darrington asked where the definition of serious emotional disturbance (SED) comes from? **Dr. Snow** said it means it makes the person dysfunctional, they can't function on a day to day basis. **Senator Darrington** said this is important regarding inclusivity or exclusivity and the total cost of the program. **Ms. Holly-Priest** said it is referenced in Code and those are the definitions they used.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1 and 2].

MOTION **Senator Darrington** moved to approve the minutes of March 5, 2008. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

MOTION **Vice Chairman Broadsword** moved to approve the minutes of March 3, 2008. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 3:43 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 12, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senators McGee, Coiner, and Werk

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Lodge** called the meeting to order.

H 512 Relating to Health and Safety and the Idaho Anatomical Gift Act

Representative Margaret Henbest explained that this legislation directs the director of the Department of Health and Welfare to register facilities for the storage and/or transport of human bodies and body parts intended for research or educational purposes. There is no impact to the General Fund. The Department of Health and Welfare will absorb the responsibilities into their current budget.

Senator Darrington said that Representative Henbest wrote significant amendments to the Anatomical Gift Act in the past, and this is a new section. He asked Representative Henbest to address how this relates to the original act? **Representative Henbest** said she plans to address this in her comments.

Representative Henbest said the Uniform Donor Act regulates how people go through the act of donating their organs for the purpose of transplantation and makes prohibitions against selling organs for transplantation. There is a bit of a gap in the Federal regulations and statutes as it relates to research and education. The Uniform Donor Act is silent in terms of monetary gain in supplying tissue and organs for research and education. She noted some instances reported in the press about this issue. This legislation requires registration with the Department of Health and Welfare of activities, location of business, method of transporting for this business. It also places requirements on testing body parts which will be determined by rule in the Department of Health and Welfare.

Senator Hammond asked why the penalties are only civil and not criminal? **Representative Henbest** said she cannot answer that, but that may be added later.

Senator Darrington said this is a well done piece of legislation. One reason the penalties are civil may be that with civil penalties you also have a chance for civil cause of action because this deals with people's family members who are deceased. He then asked how many facilities in the State of Idaho would need to be licensed for this? **Representative Henbest** replied that given some of the cases that have happened across the United States, there are donor programs within universities, mortuaries and businesses that deal with this. It is hard to know how many are out there until registration is required. **Senator Darrington** asked if the State of Idaho has capability for cryogenics? **Representative Henbest** said not that she is aware of.

Senator Kelly said this is a registration statute - requiring people to register and if they don't register, it provides for a civil violation. There is criminal penalty in the revised Uniform Act and she believes in looking at the criminal code there are violations that would occur in terms of trafficking of body parts. The bill before us is just a piece of that. **Representative Henbest** thanked Senator Kelly and said that when they rewrote the Uniform Act they inserted the words research and education as a part of the section on penalty for selling body parts for gain.

Vice Chairman Broadword asked if it is the intent of this legislation that Health and Welfare will develop a registration fee to help offset their costs in the future? **Representative Henbest** said there is no ability in this legislation for them to place a fee onto this. **Vice Chairman Broadword** asked maybe by rule? **Representative Henbest** said she doesn't know. The message she received from the Department was that they could absorb this cost within their current program. They don't see this as an extraordinary cost. Hypothetically, if it did become too burdensome, they could come back to the Legislature and ask for a fee to be associated with this.

Senator Kelly asked if it is envisioned that every time a body part is transported or sold that it would have a certification that it was AIDS free? **Representative Henbest** said that is correct, and any other diseases identified by rule in the Department. Right now, testing an organ or tissue that is transplanted for diseases is required. These tissues and organs are not for transplant, but they might be handled by someone transporting or preparing them, so this gives the Department the ability to make a judgement about how infectious that might be.

MOTION

Senator Kelly moved to send H 512 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**. **Senator Kelly** will sponsor this bill.

Senator Darrington noted that **Representative Henbest** will be retiring with this legislative session and he said it has been a pleasure for everyone in both political parties to be associated with her. **Chairman Lodge** said she thoroughly enjoyed serving with **Representative**

Henbest on Joint Finance-Appropriations Committee (JFAC) and that she will really be missed.

Chairman Lodge introduced **Dr. Joan Cloonan**, Chairman of the Idaho Board of Environmental Quality, who then introduced the members of the Board and appointees in attendance.

GUBERNATORIAL APPOINTMENT

Craig D. Harlen, of Coeur d'Alene was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2007 and expiring July 1, 2011. **Mr. Harlen** said he is the retired Vice President of Simplot Minerals and Chemicals in Pocatello. He received his Bachelor of Science in Chemical Engineering from Montana State University. He has over 22 years experience in mining and processing phosphate fertilizer products and has been recognized for his outstanding achievements in reclamation projects.

Senator Darrington asked of each of the appointees to comment on the fact that sometimes the Board is criticized, but in the final analysis the only thing they can do is carry out federal compliance or state law. He said he views this as the Board's challenge. **Mr. Harlen** said it is very interesting that when he is approached by people in regard to their dealings with the Department, they seem to feel the Board has oversight of the Department. But in every instance, he has been able to reach an understanding of what the difficulty was by listening to the people and then talking with the Department. The Department has always been very forthcoming in sitting down and discussing areas of disagreement, and every instance has had a very satisfactory resolution.

Senator Kelly asked the appointees to comment about the rulemaking process and how it works or doesn't work. She said the DEQ does an outstanding job of rulemaking and presenting the rules to the Legislature. **Mr. Harlen** said his personal experience with the process has been very positive and he believes its success lies in the fact that the DEQ brings each of the interested parties to the table with equal opportunity to get their point across. The only frustration that he has seen with it is when the process doesn't get started soon enough to finish the process before it comes to the Legislature. This is a timing issue, not a procedural issue.

Senator Hammond asked each of the appointees to comment on the occasions when a local government ends up negotiating directly with the Environmental Protection Agency (EPA) and another state. He said he shared with Director Hardesty that he thought the DEQ should also play some kind of intermediary role in helping these local agencies deal with a much larger agency such as EPA. He asked for the appointees' philosophy on that issue. **Mr. Harlen** said the Board's responsibilities are very narrowly defined to the promulgation of rules and the hearing of appeals, so they may certainly talk about it over lunch, but it is not something the Board can influence.

GUBERNATORIAL APPOINTMENT

John R. MacMillan, Ph.D. of Buhl was appointed to the Board of Environmental quality to serve a term commencing July 1, 2007 and expiring July 1, 2011. Dr. MacMillan is the Vice President of Research and Environmental Affairs for Clear Springs Foods, Inc. in Buhl. He received his Doctor of Philosophy in fish pathology from the University of

Washington, and Master of Science in fish biology from Michigan State University. Dr. MacMillan has performed extensive research on fish health and aquaculture issues and has published many scientific articles and papers. He has served on many task forces, committees and associations studying water quality, fish health and aquaculture issues.

Dr. MacMillan reiterated Mr. Harlen's statement that the Board is responsible for the promulgation of rules and the hearing of contested cases. Regarding negotiated rulemaking, he favors this for all agencies. It is a very expeditious process for Board members because all the contentious issues about a rule have already been taken care of through the negotiated rulemaking process, so by the time the rule gets to the Board, they explore the intricacies but don't have to deal very often with contentious issues. He feels it is a very helpful process.

In response to Senator Darrington's question, Dr. MacMillan said the Board does not make the law, just the rules. What he has focused on is water quality issues. He said one of the reasons he likes to serve on this Board is that he can bring scientific expertise to the table and can discuss, technically and scientifically, the merits of various proposed standards.

Senator Darrington asked if Dr. MacMillan was at Michigan State University during the Warfarin development? **Dr. MacMillan** said he doesn't know if he was there when it was developed, but the veterinarian that was intimately involved with that development became the first Dean of the College of Veterinary Medicine at Mississippi State University where he was a faculty member.

Vice Chairman Broadsword asked about the purchase of one of the fish farms by the State of Idaho in an attempt to help the City of Twin Falls with their water quality issues with arsenic. She asked Dr. MacMillan's opinion whether he thinks this is a solution to this problem? **Dr. MacMillan** said it is a bit problematic to him. He said he appreciates the efforts of the State to come up with a solution, but there are some issues there that, in the long term, are of great concern. One is that this is a Band-Aid. The problems in the aquifer are very significant and treating that aquifer with Band-Aids is not going to resolve the problem. Until they get at the larger issue they will have problems. There are details of that program that he hasn't heard that need to be addressed. The proposal that the City of Twin Falls will take 15 cubic feet per second of water to use for their drinking water sounds great, except that they are taking a non-consumptive water right and turning it into a consumptive water right. He doesn't know how that can be done legally. He said he is always concerned with taking water from someone to give to someone else - taking a private property right and giving it to someone else. These are significant issues because they are setting a precedent for the entire State of Idaho. These things require an awful lot of deliberation. He said he is anxious to hear the Legislature's discussion of this issue, as well as the legal issues.

Vice Chairman Broadsword asked Dr. MacMillan to comment on whether mixing the water from the river with the well water to reduce the

arsenic is a viable plan? **Dr. MacMillan** said they are proposing to take spring water which is very low in arsenic and mixing it with well water that the City of Twin Falls uses for drinking water, which has some high concentrations of arsenic, to bring that concentration down. That is a perfectly legitimate, safe thing to do.

Senator Kelly said she assumes Dr. MacMillan was speaking in his capacity as an employee of Clear Springs. She asked him how he handles his position with that for-profit company with his role as a Board member? Does he ever opt out of voting on things because of a conflict of interest? **Dr. MacMillan** said under most circumstances there is no conflict of interest with what he does on the Board and what he does for Clear Springs Foods. There was a contested case recently in which he recused himself. The State of Idaho does not have National Pollution Discharge Elimination Systems (NPDES) primacy, and that is the only issue that DEQ deals with that could potentially be a conflict. He said by no means was he representing the Board when he was answering Vice Chairman Broadsword's question about water quality issues. Water quality issues are not something that DEQ has jurisdiction over.

GUBERNATORIAL APPOINTMENT

Leonard N. Purdy, Jr. of Picabo was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2007 and expiring July 1, 2011. Mr. Purdy is a fourth-generation cattle rancher who owns and operates Picabo Livestock Company, Purdy Enterprises, and the Silver Creek Convenience Store in Picabo. He received his Bachelors of Science in Agricultural Engineering from the University of Idaho. Mr. Purdy is a past director of the Idaho Cattlemen's Association, served on the Board of Directors of the Idaho Nature Conservancy, and was awarded the National Environmental Stewardship Award, the Department of Interior Stewardship Award, and is in the Southern Idaho Livestock Hall of Fame. He said he feels he brings something to the Board because he operates in the real world. This will be his third appointment to the DEQ Board. He said he was very proud to see that negotiated rulemaking brought a solution to the open field burning in Idaho. He said without negotiated rulemaking that would never have happened. He was also proud that the Legislature sent the Mining Association back to the DEQ to renegotiate that rule. He said he thinks there is a solution there, they just didn't get a chance to negotiate long enough. He feels all agencies should have negotiated rulemaking because it lets the regulator and the regulated get together and become almost friends and work out solutions to problems.

Chairman Lodge said she, too, didn't ever think the grass burning would happen, so she is confident that the Board will work very closely with the mining industry to solve the problems that exist there. She thanked all the Board members for being in Committee today and explained that voting on these appointments will be done tomorrow.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1]

MOTION

Vice Chairman Broadsword moved to approve the minutes for March 10, 2008. **Senator Darrington** seconded the motion. The motion carried

by **voice vote**.

ADJOURNMENT Chairman Lodge adjourned the meeting at 4:05 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 13, 2008

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senators McGee, Werk, and Kelly

NOTE: The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

GUESTS: See attached sign-in sheet.

CONVENED: **Chairman Lodge** called the meeting to order.

GUBERNATORIAL NOMINATION **Craig D. Harlen** of Coeur d'Alene was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2007 and expiring July 1, 2011.

MOTION **Senator Hammond** moved to send the appointment of Craig Harlen to the Senate floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**. **Senator Hammond** will sponsor this appointment.

GUBERNATORIAL NOMINATION **John R. MacMillan** of Buhl was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2007 and expiring July 1, 2011.

MOTION **Vice Chairman Broadsword** moved to send the appointment of John MacMillan to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**. **Senator Coiner** will sponsor this appointment.

GUBERNATORIAL NOMINATION **Nick Purdy** of Picabo was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2007 and expiring July 1, 2011.

MOTION **Senator Darrington** moved to send the appointment of Nick Purdy to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**. **Senator Stennett** will sponsor this appointment.

HCR 42 Stating Findings of the Legislature and Urging the Department of Health and Welfare to Work with the Food Safety Advisory Council to Review

Current Research on Health Risks Pertaining to Natural Rubber Latex Use in Food Preparation and Recommend Guidelines to Deal with Such Risks

Chairman Lodge said she just talked to **Representative Sue Chew** that she found out today that this Resolution that Representative Chew has worked on is already scheduled to be on the April 2, 2008 agenda of the Food Safety and Advisory Committee, which is what the Resolution says. Because of this, **Chairman Lodge** is pulling HCR 42 from the Agenda.

Representative Chew said it looks like the Advisory Committee is making good progress on this, but because of the public health and safety risk, if they aren't able to make good progress she would like to bring this Resolution back next year. **Chairman Lodge** said absolutely.

Senator Coiner asked for a report on the bill that was passed a couple of years ago allowing those with disabilities to make money while still qualifying for Medicaid, but they pay the difference. **Vice Chairman Broadsword** said it may be best to have the report come from the Department of Health and Welfare so they can report on how many individuals have actually taken advantage of that system and the success of the program. **Chairman Lodge** said maybe this could be put on the agenda for the first part of next year.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 3:17 p.m.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 19, 2008
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Bair, Hammond, Werk, and Kelly
- MEMBERS ABSENT/ EXCUSED:**
- NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
- GUESTS:** See attached sign-in sheet.
- CONVENED:** **Chairman Lodge** called the meeting to order and alerted the Committee to the letter they received from Linda Hatzenbuehler, Chairman of the Idaho Mental Health Planning Council. Chairman Lodge explained that Ms. Hatzenbuehler was unable to present this information to the Committee on March 18, 2008 as planned and had submitted her report via letter instead.
- Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1].
- MOTION** **Vice Chairman Broadsword** moved to approve the minutes of March 12 and 13, 2008. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.
- H 489aa** Relating to the Department of Health and Welfare and the Health Quality Planning Commission
- Representative John Rusche** said this bill is to extend the life of the Health Quality Planning Commission (HQPC) which was established in 2006, by removing the sunset date. The purpose for the commission was to develop a plan for health information and data exchange to improve information flow between healthcare providers, to reduce duplication and lower costs, and to improve patient safety. He reported that the commission has nearly completed that part of its charge.
- The second purpose was to develop and monitor healthcare use and safety, and report findings to the Legislature. This is more correctly an ongoing task for which the HQPC is well suited. With the increase of "consumer directed" health plans and larger out of pocket financial

responsibilities for most families, the need for health system information to be available in a transparent fashion has increased. This bill adds the responsibility of considering reports in layman's terms to the HQPC charge.

Vice Chairman Broadsword said she received a call from Senator Compton who said that he has served on this commission and is very impressed with the quality of people on the commission. He said he feels they will really be able to make a difference.

MOTION

Senator Coiner moved to send H 489aa to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Bair**. The motion carried by **voice vote**. **Senator Stegner** will sponsor this bill.

H 591aa

Relating to Managed Care Reform

Representative Sharon Block said this proposed legislation would give the ability to Health and Welfare Substance Use Disorder Bureau, in collaboration with the Interagency Committee on Substance Abuse Prevention and Treatment, to engage in preferred contracting with private treatment providers. Preferred contracting is currently standard practice for Medicaid PSR providers. This is for providers who wish to be reimbursed for services from the State. This does not affect providers who receive reimbursement by private pay and insurance nor does it affect current network providers.

This is a result of a study done by the Interagency Committee on Substance Abuse Prevention and Treatment which found that there is an inconsistency in where substance abuse providers are located throughout the State. There are too many providers in some areas and too few in other areas - particularly in rural areas.

Representative Tom Loertscher said this bill makes an exception to the "any willing provider" statute that says that as long as the provider meets the minimum requirements of the Department of Health and Welfare they are eligible to provide services. The problem is that there is a very narrow area having to do with substance abuse treatment where the Department needs to selectively contract with providers to influence them to provide services in rural areas. This would give the Department the opportunity to even provide a higher rate to encourage providers to move into outlying areas.

Senator Hammond said he received an email from a physician who expressed concern about this bill. His concern is the departure from "any willing provider" and how that can enhance services. Senator Hammond asked for help in answering these concerns. **Representative Loertscher** said this applies to a very narrow group of people and doesn't pertain to physicians per se. It applies to services provided by those agencies that provide substance abuse treatment. **Senator Hammond** said his concern is that with eliminating "any willing provider" for these services, the door is open to widening the scope of this to other areas. **Representative Loertscher** said he would personally fight against widening the scope of this because he doesn't think that is a good idea either.

Vice Chairman Broadsword said that doesn't address the concern that this weakens the "any willing provider" clause. She asked Representative Loertscher to comment on that. **Representative Loertscher** said he can understand the concern, and he shares that same concern if this applied to a broad spectrum of services, but with the new found emphasis on this particular scope of services, the Department needs to be able to direct those services throughout the State where there may not be those providers available. The Department sees this as the only way they could address this issue. They can even look at existing providers and ask them to extend their services to outlying areas, with added incentives for doing that. **Vice Chairman Broadsword** said her concern is more that this would reduce the amount of compensation for these providers and that is why they haven't been willing providers because they aren't willing to take the compensation. If we make an exception to that clause, how do we know there will be providers that will do it for what the State is willing to pay? **Representative Loertscher** said that is the issue, especially in rural areas, how you get folks to do that. There will have to be incentives to do that. He said he sees this as the other way around. This is an opportunity for the Department, if they can selectively contract and don't have to accept any provider, they will be able to direct in that area.

Representative Margaret Henbest said there is an exception in the "any willing provider" statute right now for the Department of Health and Welfare. This is just adding to that and specifying again this particular service within the Department, understanding that this is a publically provided service with taxpayer dollars that we are providing to people who couldn't purchase those services with private dollars or who aren't privately insured. Since we have made an exception for the Department, it isn't unheard of for this to be more specific in the particular problem of distribution of providers throughout the State.

Senator Darrington asked if we have certification or registration of some sort through the Department for those who provide these services other than their academic credentials? **Representative Henbest** said they have moved down the credentialing path with mental health services providers, but not in substance abuse. Through the working group they are now moving in that direction in terms of looking at outcomes by provider and may decide to selectively contract by outcomes, but that data and decision making hasn't happened yet. The foundations are just being laid for that. **Senator Darrington** asked what is the possibility of the Department drafting a Request for Proposals (RFP) in such fashion to favor a provider they prefer over other willing providers that may be equally credentialed or certified or available? **Representative Henbest** said they could decide to contract with certain providers and by that action may be able to disincentivise someone from setting up shop in a particular area that has tons of providers in it. At the same time they could increase their reimbursement in areas throughout the State that don't have providers. Part of it is a distribution problem and they are trying to figure out how to solve that problem understanding that this is public dollars going to those providers. Those providers can still receive private payment from private insurance companies and people who want to pay for their services. That option is still available to them and they can still be

certified, qualified providers. **Senator Darrington** asked are you suggesting that the Department would contract with providers without going through an RFP process? He said he isn't saying that the Department would do this legitimately, but the possibility does exist to contract with providers they prefer for whatever reasons. He asked he assumes that there would be no RFP involved, is that correct?

Representative Henbest said this is the first step that the Department would like to take and the testimony received in their committee hasn't flushed that out yet. **Representative Loertscher** said under current law they don't use an RFP. This would enable them to do that if they so chose to. **Senator Darrington** said this would alter the "any willing provider" doctrine that has been referred to by at least two other questioners here. He asked if that is correct? **Representative Loertscher** said only in this area.

Richard Armstrong, Director of the Department of Health and Welfare, gave an example of where the Department has used selective contracting effectively in the area of prevention which is not currently touched by the "any willing provider" law. The Department selectively contracted for individuals and companies to serve in the prevention side of substance abuse. He presented a map with areas marked where prevention providers were located which demonstrated that rural areas were now being served. The current market would not do that because providers have no assurance that if they move to a rural community that all services paid for by the State would come their direction. He said in the 2009 budget year there were no increases in fees for any program, so the Department doesn't have the luxury of paying providers more dollars. He said his job is to find a way to deliver services for the substance abuse program with the same money the Department has today but get more people served. This is one tool - it is not the only answer because there still has to be accountability and tracking.

Senator Bair asked Director Armstrong to walk him through the selective process for a new area for substance abuse help. **Director Armstrong** said typically they would go to providers in that geographic region to see if there was interest on their part to service that community. If there was no one in the local community, they would move out to look for others.

Director Armstrong addressed the earlier question about the RFP. He said RFPs are typically for one carrier for the whole State. He said that isn't practical at all because he is not sure anyone would want to set up shop in some of the small communities because they wouldn't have a local base of support. How would they leverage their home office staff out into the outreach?

Kathie Garrett, Representative for Advocates for Addiction Counseling and Treatment (AACT), a substance abuse provider group, stated that the group could not attend today's meeting but they did meet as a Board and asked Ms. Garrett to share some of their concerns. She said there is a process to become licensed to practice substance abuse treatment that can take up to six months.

She said AACT-Idaho supports a State wide system of substance abuse

treatment that encourages an adequate number of qualified professionals serving each geographical area of the State, but they believe H 591 will not accomplish all of the goals. They believe three things need to happen to accomplish their organization's goals. First, the development of standards that incorporate "best practices" and successful treatment outcomes; second, the measuring of treatment outcomes; and third, client choice of provider because choice encourages competition, which generates improved services.

She said AACT-Idaho is committed to working with the Interagency Committee on Substance Abuse and the Department of Health and Welfare to develop the tools Idaho needs to assist citizens with substance abuse disorders to help provide successful recovery and improved quality of life for them.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 2].

Larry Benton, Representative for the Specialty Hospitals of Idaho, said he is in total support of the substance abuse program that Debbie Fields is managing. He believes it is needed service and he hopes it is very successful. He said he wants to speak directly to the "any willing provider" portion of this bill. He said it was initially crafted to make sure that managed care organizations, which were fairly new at the time, were protected from being excluded from providing services for which they were trained and qualified to do. There were two exemptions from that statute - Medicare and Medicaid. These are federal programs, but the Medicaid program is run by the Department of Health and Welfare and the "any willing provider" pertains to any Medicaid program that the Department runs. This program is outside the scope of that program. He said his concern is that the "any willing provider" provision is getting a crack in it because this adds a third exemption. It is a hairline crack because it is exclusive to this particular program. He said he is not going to oppose this legislation but he wants the Committee to be aware that this was a strong statute effort when it was first put in. They were very careful to make sure that it had the spectrum of inviting any provider, if they could meet the terms and conditions of a contract, not minimum standards. There are several companies that are very good at crafting terms and conditions to basically point at the provider of services that they want. He said he had hoped that the Department would use those services. He said this is a hairline crack and he hopes it does not lead to further hairline cracks. He encouraged the Committee to watch this in the future and be careful of exemptions to this law.

Representative Block summarized the bill and asked for the Committee to support this legislation.

MOTION

Senator McGee moved to send H 591aa to the Senate floor with a do pass recommendation. The motion was seconded by **Vice Chairman Broadsword**. The motion carried by **voice vote**. **Senator Kelly** will sponsor this bill.

H 511aa

Relating to Child Mortality Prevention

Representative Russ Matthews said this legislation adds a new Chapter 20 to *Title 39 of Idaho Code*. He said this bill codifies in statute what has been done by executive order by establishing a statewide multi-disciplinary, multi-agency Child Mortality Prevention team to aid in the prevention of child deaths through the examination of relevant records. He alerted the Committee that copies of three executive orders from previous governors had been given to them. He said the intent of the legislation is to have an examination of relevant records be done in a manner that respects the dignity of the deceased child and the deceased child's family. The purpose is to have a child fatality system to review the records of all childhood deaths in Idaho in order to develop a community approach to the prevention of childhood fatalities and to understand the incidence and causes of childhood deaths, identify gaps or deficiencies that may exist in the delivery of services for children and their families that are designed to prevent child deaths and make recommendations for any changes to laws, rules and policies that will support the healthy development of children in the State and prevent childhood death. He said then Idaho may use the findings of this team in developing approaches to take action to prevent these deaths and improve the health and safety of Idaho's children.

He told of his personal experience with his daughter who was identified as being prone to having Sudden Infant Death Syndrome (SIDS).

Representative Henbest passed examples of older reports to the Committee.

Representative Henbest said the core purpose of the Child Mortality Prevention Team is highlighted on line 20 of page 5 of the bill. She said the purpose is not to look back on the death and criticize or assign blame, the purpose is to look forward and gain information from a review of the death to see if there is a policy recommendation, law changes, or educational opportunities to prevent child deaths in the future. She explained other sections of the bill including section 39-2008 which provides a team fund. The estimated fiscal impact is \$43,500. She said the purpose of this legislation is to sustain this effort over time, not to episodically look at child deaths, but to look at those trends over time to see if our educational efforts, legal changes, or whatever outcome of these reviews has brought forward has any impact on child deaths or certain causes of those deaths.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 3].

Vice Chairman Broadword asked if the reason for codifying this is because you feel executive orders have been intermittent and you have seen highs and lows? In the last executive order which was in August of 2006, there were 14 members listed of that committee. This bill has only nine. She asked why the difference? **Representative Henbest** said there is model recommendation nationally in terms of how these teams should be composed. There was a workgroup effort this past summer and that was their recommendation.

Representative Matthews said 49 of the 50 states already have a review team in place right now. This is something that is working well with other states.

Senator Kelly asked why they used the word "team" when this is set up like a board or commission, like a political subdivision of a governmental entity? It seems unusual to her. **Representative Henbest** said she isn't aware of another instance where a team would be referred to, but that doesn't mean there isn't one. She said in her time of being aware of this it has always been called a team, so they may have just gone on with what it was. **Senator Kelly** said the team members will sign confidentiality agreement. The documents they get to review may or may not be public documents, but they will sign something that says they won't independently reveal them. She asked if that is the intent of the confidentiality agreement? **Representative Henbest** said that is correct because this is not a reinvestigation. Some of these cases may proceed to the criminal court if it was a child protective action. So there has to be a separation from that criminal proceeding which will go forward no matter what. The team is looking at these incidences collectively to see if there is anything that could have prevented incidence going forward in the future.

Senator Kelly said this kind of reminds her of the child abuse report they received in Judiciary & Rules Committee. She asked if it is something like that? **Representative Henbest** said that report goes back and looks at cases that were filed from a child protection standpoint county wide and then compiles the number of cases brought before a prosecutor, etc. A statistical look at what happened. This is actually a review of individual cases of child deaths across the State. Things that would be discerned would be things like the SIDS death research that helped us understand that the incidence of SIDS went up if a baby was sleeping on their stomach versus sleeping on their back. Then there was a huge effort across the world to educate parents about this. But, in looking at coroner's reports, there wasn't any content about the coroner asking parents whether babies were sleeping on their stomach or back. It is looking at all those reports in our State and then a recommendation coming forward that this information was needed in these reports. When this information was included in coroner reports it allowed us to see whether education on SIDS was making a difference in our State.

Senator Darrington asked do they make a quarterly or annual report and to whom is that report made? **Representative Henbest** said this is spelled out on page 6, line 25 of the bill. **Senator Darrington** asked if that report would include recommendations to the Legislature for more restrictive legislation for things such as four wheeler and jet skis - things that kids ought to do? **Representative Henbest** said that could be part of the report - the recommendation that policy makers take action on putting fences around canals possibly. It doesn't mean that the Legislature needs to take action on those recommendations.

Representative Matthews said this will sunset in 2013, so the team will have to come back to show successes and how this will benefit Idaho, but will allow them time to show the fruits there.

Senator Kelly asked if the funding for this will be a trailer bill?
Representative Henbest said once it passes, Joint Finance-Appropriations Committee (JFAC) will deal with it.

Shirley Alexander, Child Welfare Program Manager with the Department of Health and Welfare, Division of Family and Community Services, said she was a member of the Idaho Child Mortality Review Team from 1998 to 2003. She said she supports H 511aa. She stated that the purpose of this bill is to prevent future child deaths by reviewing the deaths and looking at risk factors and possible prevention factors that could be there and then putting those findings in a report with recommendations. She said the former team was formed by executive order and that executive order could not and would not give this team the protection it needed to sustain. One safeguard the review team needed was the confidentiality to ensure that they had immunity from having information of those reviews used in possible criminal cases. Without immunity there was concern that the information on these meetings would not be confidential.

She said this proposed legislation will allow us to get Idaho off the map as the only state in the entire nation that does not have a Child Mortality Review team. It is important to have this team because this will inform us of what is happening in Idaho with Idaho child deaths and will help us have improved family services, a better linkage among agencies, and will help us identify changes needed in practices and policies. There is no other way to get meaningful trends or prevent future deaths. It is important that we are responsible by looking into the causes of child deaths so that we can protect children. She encouraged the Committee to support H 511aa.

Kirtlan Naylor, Attorney and Chairman of the Governor's Task Force on Children at Risk, said the term "team" has a statutory precedent in that there is a multi-disciplinary team statute that provides for multi-disciplinary teams to come together and review child deaths or child abuse on a county level. That is the idea behind this not being a commission or board with some kind of specific legislative mandate. More importantly, this team would provide education on trends. He referred to graphs he provided the Committee in a handout. The purpose of the team is to see if certain deaths that are preventable for our children are incidents or if there is a pattern. An example of an incident would be someone being very stupid on a four wheeler. We can't legislate against stupidity. What we can do is look at some trends that might tell us we need to educate people. For those reasons, he encouraged the Committee to pass this legislation.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary [see Attachment 4].

MOTION

Senator McGee moved to send H 511aa to the floor with a do pass recommendation. The motion was seconded by **Senator Werk**.

Senator Darrington said he likes the educational aspect of this bill but he is relatively sure that this will result in a lot more restrictive laws down the road into how people conduct their lives. He said this will result in greater bureaucracy and restriction of personal freedoms.

Chairman Lodge called for a vote on H 511aa. The motion carried by **voice vote. Senator McGee** will sponsor this bill.

Chairman Lodge thanked Page Bridget Borup for the outstanding job she has done for the Committee and awarded her letters of recommendation and a gift. She also thanked Donna Holloway for the minutes done for the Committee and awarded her a gift.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Donna Holloway
Assistant