MINUTES

(Approved by the Subcommittee)

IMMUNIZATION SUBCOMMITTEE
of the
HEALTH CARE TASK FORCE

November 30, 2009
Boise, Idaho

Immunization Subcommittee members present were: Senators Dean Cameron, Patti Anne Lodge and John McGee and Representatives Gary Collins and John Rusche. Representative Carlos Bilbao was absent and excused. Panel participants were: Richard Rainey, M.D., Idaho Medical Director, Regence BlueShield of Idaho; Susie Pouliot, Idaho Medical Association; Corey Surber, Advocacy & Community Health Coordinator, Saint Alphonsus; Jane Smith, Administrator, Division of Public Health, Department of Health and Welfare; Kurt G. Stembridge, Government Affairs Manager, State Government Affairs, GlaxoSmithKline; Stephen Ryter, M.D., Medical Director, Blue Cross of Idaho; Richard M. Armstrong, Director, Department of Health and Welfare; Christine Hahn, M.D., Office of Epidemiology and Food Protection, Department of Health and Welfare; Russell Duke, Director, Public Health District No. 4; Jeremy Pisca, Risch Pisca, PLLC, Pharmaceutical Research & Manufacturers Association and St. Alphonsus Regional Medical Center; Tom Patterson, M.D., Chairman of the Immunization Coalition; and Ted Epperly, M.D., Program Director and CEO, Family Medicine Residency of Idaho. Legislative Services Office staff were: Paige Alan Parker and Charmi Arregui.

Other attendees were: Bruce Krosch, Director, Public Health District No. 3; Dick Schultz, Rebecca Coyle and Traci Berreth, Department of Health and Welfare; Kathie Garrett, Family Medicine Residency Program; Benjamin Davenport, Risch Pisca, PLLC; Skip Smyser and Martin Bilbao, Connolly & Smyser; Julie Taylor, Woody Richards and Steve Tobiason, Blue Cross of Idaho; Paul Nielsen and Gene Tosaya, MedImmune; Julia Robinson, Family Medicine Residency; Denise Chuckovich and Teri Barker, Idaho Primary Care Association (IPCA); Susan Kim, Family Medicine Residency of Idaho; Mary Lou Kinney, Idaho Area Health Education Center and Cover Idaho Kids; Tim Olson, Regence BlueShield of Idaho; Steve Thomas, Idaho Association of Health Plans; LaDonna Larson, Idaho Health Data Exchange; Angelo Tomes, Health Management Systems; Pat Sullivan, Sullivan & Reberger; Colby Cameron, Sullivan & Reberger; Joie McGarvin, America's Health Insurance Plans; and David Lehman.

Co-chair Senator Dean Cameron called the meeting to order at 8:33 a.m. **Co-chair Representative Collins moved that the minutes from November 4, 2009 be approved, seconded by Senator McGee and the voice vote to approve was unanimous.**

Ms. Jane Smith, Administrator, Division of Public Health, Department of Health and Welfare, gave follow-up information on the vaccine selection process and costs. **Ms. Smith** had

previously provided a handout at the November 4, 2009, meeting of the task force that showed how the $2.1 million of emergency immunization program funding had been spent. At this meeting, she provided additional vaccine information. **Ms. Smith** distributed a handout "SFY 2009 Pediatric Vaccine Summary, July 2009 - June 2009," which is available at the Legislative Services Office (LSO). This handout shows that total immunization program funding for state fiscal year (SFY) 2009 was $18,854,521, broken down by vaccine, funding source (federal Vaccine for Children (VFC), federal section 317, and state) and total number of doses administered. The percentage breakdown of vaccine funding sources for SFY 2008 was VFC 69.29%, section 317 funds 13.83% and State General Funds 16.88%. For SFY 2009 the percentage fund breakdown was VFC 74.24%, section 317 funds 10.62% and State General Funds 15.14%.

Senator Cameron asked what 2010 might look like. **Ms. Smith** said the year-to-year patterns are similar. **Senator Cameron** asked if there was a general trend of growth, and **Ms. Smith** answered that costs continue to go up with medical inflation and population increases, but the immunization rate has not gone up much.

Ms. Smith said that she was unable to estimate what the cost comparison between a formulary approach compared to allowing practitioners the option of choosing vaccines. It would be a guessing game about which manufacturer, antigens and vaccine combinations a practitioner would choose. **Ms. Smith** said that variables include the expense of various brands, packaging, efficacy and waste. **Ms. Smith** said that prices often change during the year. Thus, cost savings could not be calculated except by total guesswork. However, she estimated that the formulary approach may save around 3-5%, compared to the practitioner choice option. **Senator Cameron** asked if 3-5% meant it was more expensive to provide more options to practitioners or less expensive. **Ms. Smith** responded, "probably more expensive."

Ms. Smith commented that **Dr. Epperly** at the November 4, 2009, meeting of the task force had handed out recommendations to improve immunization rates in Idaho and that **Senator Cameron** suggested there be a plan on addressing some of those recommendations. In response, **Ms. Smith** handed out "Idaho Immunization Program Response to Recommendations for Increasing Rates and Overview of Activities Conducted and Planned," available at LSO, showing an overview of accomplishments and future plans with regard to immunization education and outreach.

Ms. Smith provided a handout entitled "Pediatric Vaccines Currently Provided by the Idaho Immunization Program," available in LSO. This compared vaccine costs by packaging and brand for the Centers for Disease Control (CDC), the Minnesota Multistate Contracting Alliance for Pharmacy (MMCAP) and the private sector. **Senator Lodge** asked why the footnotes on this handout included a federal excise tax. **Ms. Smith** said she did not know. **Mr. Kurt Stembridge**, Government Affairs Manager, State Government, GlaxoSmithKline, responded that this federal excise tax that goes into the fund for vaccine injuries is used to provide compensation for anyone having an adverse effect from a vaccine. **Senator Lodge** inquired if that included lawsuits, and **Mr. Stembridge** answered that persons filing lawsuits do try to access that fund.

Senator Cameron opened the round-table discussion, including panel participants, on suggestions for the subcommittee. **Dr. Ted Epperly**, M.D., Program Director and CEO, Family Medicine Residency of Idaho, said that he was very impressed with work done by a group formed to find solutions to the immunization rate problem. That working group is composed of representatives from Blue Cross,

BlueShield, Idaho Association of Insurance Companies, Central District Health, Department of Health and Welfare, and several panel members, including **Dr. Patterson.** The working group focused on New Hampshire, which is near the top in immunization rates in the United States, as a model. New Hampshire crafted a system where four pots of money are utilized to purchase vaccine, including section 317 funds, VFC program funds and state funds of $400,000 annually, which is much less than Idaho's current $2.2 million. The fourth source is an assessment on insurance companies for all covered lives. That assessment is paid to a non-profit corporation, which transfers the funds to the state for the purchase of vaccine from the CDC at the lowest possible rate.

Dr. Epperly deferred to **Steve Tobiason**, representing the Idaho Association of Health Plans (IAHP), who reported that five of the six insurance companies represented by the Association agreed to such an assessment in a telephone conference. **Mr. Tobiason** said the IAHP supports the following principles: (1) improve the immunization rate in Idaho in order to improve wellness of Idaho children; (2) allow physicians to keep a single inventory of vaccines for both insured and uninsured children; (3) recognize that all IAHP members have an obligation to pass on the least amount of cost to their members by effectively managing cost; and (4) determine if there is a legally permissive way for vaccines to be purchased at the federal rate in Idaho through some kind of statutory structure that would assess a tax on insurance carriers, similar to what New Hampshire has done. **Mr. Tobiason** clarified that insurance companies are willing to do their part, but that it is not appropriate to ask them to do more than their part. **Mr. Tobiason** reported that outside counsel has been consulted as to whether the Medicaid regulations would allow private funds to be channeled through the state for the purchase of vaccines at the CDC rate. The legal opinion received is that the Medicaid regulations would allow taking money into the state through a proper mechanism. This benefits both insured and uninsured children. That written legal opinion will be shared with the task force.

Insurance companies that are licensed in Idaho could be assessed. The problematic side is with self-funded employers. The Employee Retirement Income Security Act of 1974 (ERISA), the federal law that governs employers with fully or partially self-funded insurance plans, creates complications for state regulation through its contradictory preemption and savings clauses. According to **Mr. Tobiason**, one way to avoid the ERISA problem might be to place an assessment against third-party administrators (TPAs) who are licensed in Idaho and who administer or manage self-funded employer programs. Legal counsel has been asked to examine this issue.

Mr. Tobiason stated that the Idaho Department of Insurance may be submitting revisions to the Idaho Code dealing with TPAs to the 2010 Legislature and that this proposed legislation will need to be examined. The bottom line is if there is a way to set up a statutory mechanism to assess TPAs, a single inventory system would be preserved and the children of employees of self-funded employers would be vaccinated with vaccine purchased at lower cost CDC rate. Complicating the assessment issue are the inter-plan relationships between insurance carriers that might create coding issues and self-funded employers, such as Simplot and Winco, who may be served by TPAs that are out-of-state. However, the basic message is that the companies represented by the IAHP want to work with the task force to figure this out this month, despite these complicated legal issues.

Representative Rusche asked whether premiums paid in Idaho to out-of-state TPAs are currently taxed under the Idaho premium tax. **Mr. Tobiason** answered that it depends on if the premium is paid on what is deemed to be an insurance product. Self-funded plans are not considered to be insurance products. It also depends on whether the TPA is licensed in Idaho. **Mr. Tobiason** stated that legal counsel is looking

at these issues. **Senator Cameron** added that unless a fully insured product is being provided, a premium tax is not being paid on self-funded programs, domestic or otherwise.

Senator Cameron asked how a premium tax or assessment or an adjustment in current fees can be prevented from impacting the actual member. **Mr. Tobiason** responded "Ultimately, you probably can't, totally." If the state can no longer purchase vaccine at CDC rates, insurance companies end up paying full market rate.

Senator Cameron remembered that Blue Cross and BlueShield had previously indicated that the additional cost of the immunization program for them was about one to two dollars per-member, per-month, and asked if that was at full price or at the CDC rate. **Dr. Rainey** responded that previous discussions were based on the MMCAP rate. The plan being proposed based on the New Hampshire model would allow vaccine to be purchased at the CDC rates, the lowest and most attractive rates. However, the New Hampshire costs are still twice as high as what would be expected, despite purchasing at the CDC rates. The New Hampshire annual assessment per covered life, per year, over past three years has been $34, $33 and $23. Part of the reason it is higher is that insurance companies in New Hampshire are being assessed for some "free loaders" who don't have reinsurance, and the biggest "free loaders" are the state of New Hampshire and federal employees. **Dr. Rainey** said that he would get more detailed numbers. **Mr. Tobiason** commented that Idaho insurance carriers in the state do not want to end up covering everything else not covered by federal money, which would drive up rates.

Senator Cameron agreed that the TPA issue is complicated but asked why Idaho wouldn't want to adopt a per-member, per-month type assessment with the remainder being borne by the current system or by working through the TPA issue. **Mr. Tobiason** said something like that may work, but the actual numbers need to be examined by actuaries, pointing out that some members do not have children, so more money would be raised than actual cost of vaccine. New Hampshire has flexibility each year to look at where it is in terms of assessment levels by comparing what is left in the pool at year's end and the projection for the next year. **Mr. Tobiason** expressed hope that physicians would take a very hard look at critical vaccines and cost. **Senator Cameron** understood that some members might be charged who don't have children but would benefit by overall better health of the pool, a tradeoff benefit. He also observed that the further the assessment is spread, the less impact there would be on the individual member.

Senator Cameron asked how Idaho can get in front of the current immunization situation and observed that, depending on what Congress does with health care reform, future subcommittee meetings may be necessary. Emergency funding for the current immunization program ends January 30, 2010, and whatever is done needs to take place as early in the 2010 session as possible. Potential assessment legislation will need an emergency clause. Being able to make adjustment to an assessment is a good idea, but the assessment may need to be front-loaded with adjustments being made later. **Senator Cameron** agreed that the insurance industry should not be required to pay more than its share, but he also agrees with the Governor that it is important that the insurance industry take care of its own members.

Representative Rusche asked if it was reasonable to ask the Department of Insurance to future subcommittee meetings to better exchange information on licensing and assessments. **Senator Cameron** answered that time is of the essence, and the subcommittee might need to obtain information from the Department of Insurance through e-mail. Regardless of the TPA issue, a program for the fully insured could be established. **Mr. Tobiason** said that if TPAs are not assessed, the dual inventory issue will not

be solved. **Mr. Tobiason** said that if the state could not assess TPAs, self-funded groups could carve out vaccine coverage. If there is no vaccination coverage, the self-funded groups would become uninsured with regard to vaccines and would be eligible for VFC funded vaccines. He was not advocating that, but said that it is a reality that could happen. He also raised the possibility that fully self-funded employer programs may not be considered an insurance product, although these programs may be administered by an insurance company.

Representative Rusche didn't think that scenario was likely to happen, using federal employees with a national coverage plan as an example. **Mr. Tobiason** commented that the federal employees could not be assessed. Fully self-funded plans, like Simplot has, are not a licensed insurance product. Such a company could say that vaccinations are not covered which would allow coverage under VFC funding, an advantage for the company.

Representative Rusche commented if that were the case, a company could still make a voluntary contribution to a vaccine foundation, even if it were to opt completely out of a child vaccination program. **Mr. Tobiason** responded that legally that might be an option and a company could voluntarily send money wherever. **Dr. Rainey** clarified that in order to obtain access to the CDC contract vaccine rate, an assessment, rather than a voluntary contribution, is necessary.

Senator Cameron inquired about the assessment mechanism and whether a non-profit private entity would collect that assessment or whether the state could collect the assessment, perhaps through the Department of Insurance, and turn the funds over to the Department of Health and Welfare to make the vaccination purchases. **Mr. Tobiason** didn't think the assessment collection entity had to be a state created non-profit, believing the key is that the assessment or tax be mandated by the state and not voluntary. **Dr. Rainey** added that New Hampshire cuts the check to the CDC and must collect the funds in order to do that. New Hampshire set up a third-party non-profit to collect the assessment, but only states have access to purchase through the CDC contract. **Senator Cameron** wondered if a non-profit body to collect the assessment was necessary. **Dr. Epperly** stated that New Hampshire created the non-profit to keep assessment collection clean and separate.

Dr. Epperly summarized the key principles that the working group followed in its approach to the recommendation it is making to the subcommittee: the process needs be fair and equitable to all including the state, children, providers, insurance companies and TPAs; and the goal is to increase the vaccination rate at the lowest cost possible while eliminating dual inventories. **Dr. Epperly** applauded the IAHP for doing its homework, including two conference calls with multiple people in New Hampshire. He opined that the New Hampshire model appears to provide a sustainable, long-term plan, even though it has many moving parts. He added that New Hampshire had received an award from the CDC for the public/private partnership it has developed and for being sustainable since 2002.

Dr. Epperly emphasized the short-term time pressure, with the temporary funding running out on January 30, 2010. Preventing a flip-flop back to VFC is very important to providers. As details are worked through and legislation drafted, short-term funding through June 30th should be considered, allowing Idaho to continue being a universal select state while a long-term solution is negotiated. **Dr. Epperly** said that immunizations for as many children as possible will raise the health of the state; protection is important, saving hospitalizations and tragedies. A $2 million outlay for immunizations equals the cost of one critical illness. If TPAs wanted to back out, he believes there would be a loud outcry from the media and public, especially if children covered under programs administered by these TPAs got sick with vaccine-preventable illnesses.

Senator Cameron emphasized that this was not a matter of whether the state wants to step up; the state cannot, since the "cupboard is bare." Short-term, some other alternative must be developed. Reserves will be depleted and will not cover the immunization shortage. The only money left standing, perhaps, will be a portion of the Millennium Fund. **Senator Cameron** said that taking six months to find alternative funding is not an option. A bill must be brought forth in 30 days that will impose an assessment and start to collect funds immediately, perhaps on the front-end, based on the number of members. **Senator Cameron** said that significant changes are coming in order to get even close to balancing the budget.

Senator Cameron asked **Mr. Tobiason** if Blue Cross acts as a TPA for self-funded employer plans in Idaho and to explain the TPA licensing requirement. **Mr. Tobiason** answered that Blue Cross was fully licensed in Idaho and does not engage in insurance business outside Idaho. Blue Cross is not required to hold a separate TPA license, which is designed for companies that only do TPA business. TPA providers assume no risk and pay an annual registration fee. **Senator Cameron** wondered what that fee amount was in Idaho.

Dr. Patterson asked what could be done by the working group to help with this 30-day deadline looming. He fears that if the state goes back to VFC status, providers will be lost. **Senator Cameron** clarified that within 30 days a bill must be drafted, and when session starts on January 11, 2010, the bill must be one of the first introduced, move quickly through the Legislature and be signed by the Governor, ideally before the end of January, 2010. This action will take a concentrated effort and will need to be supported by the industry. Short of that, on February 1, 2010, the immunization program will slip back to what it was on July 1, 2009. **Senator Cameron** said that many legislators have signed pledges to not raise taxes and cautioned that an assessment must not be seen as such a measure.

Representative Rusche expressed his appreciation for efforts to provide for an assessment to help pay for vaccinations. He asked LSO to look into what it would take to raise that money through the premium tax to pay for the immunization program. He much preferred the approach suggested by **Mr. Tobiason** but the premium tax could temporarily provide moneys to fund the program. **Representative Rusche** distributed draft legislation that temporarily removed a decrease in the premium tax. This draft legislation and a fiscal analysis on what level of premium tax would be required to fund the immunization program are available at LSO.

Senator Cameron said the premium tax approach weighs more heavily on those who are less healthy and have a higher premium in contrast to those who are young and healthy and affects not only health insurers but other insurers, including property, casualty, etc. However, the premium tax does not affect self-funded employer plans. **Representative Rusche** affirmed that to be true, but added that the advantage of the premium tax is that it is already in place and that the premium tax has been decreasing over the last five years, starting at 2.75%, now down to 1.7%, and targeted to go down to 1.5% next year. Approximately 2/10 of one percent is what is needed to return $4.2 million to the immunization program and provide for universal status. **Representative Rusche** agreed that this was not the optimum approach, preferring the assessment proposed by the insurance industry, if that be done in a timely manner.

Senator Cameron asked **Mr. Tobiason** if the only moneys being paid to the state are the premium tax, in addition to the potential assessment for the high risk pool and the carrier licensing fee. **Mr. Tobiason** answered that there is currently not any assessment in addition to the premium tax. **Senator Cameron** inquired about the amount of the premium tax payment. **Mr. Tobiason** said the payment is paid quarterly, with a settle-up period in the spring. He offered to provide more information on legal complexities to the subcommittee. **Senator Cameron** suggested submitting that legal information in

writing in the interest of time. **Mr. Tobiason** added that there had been a lawsuit that was dismissed in exchange for reducing the premium tax rate, which could generate problems if the premium tax is raised.

Dr. Patterson reiterated that problems created on July 1, 2009, had been very rough and hoped that January 30, 2010, will provide a smoother "transition" by giving providers more warning, so there might be no further impact on vaccination rates. If emergency funding is not being provided, there needs to be a Plan B to let providers know early on so they can have vaccine available for private-paying patients. That will provide some measure of good faith prior to getting legislation enacted. **Senator Cameron** agreed that was a very valid point, adding that the other alternative was to come up with another solution as to where funds might be found.

Mr. Tobiason said that with regard to the time line, the working group will do everything in its power to have an analysis from outside counsel within one week, since that is ultimately a huge driver of what can be done in Idaho. If something can be done, then meetings need to take place with the Department of Insurance and IACI, with representation from this subcommittee, to explain the situation so it doesn't look like this is coming just from the carriers. Then something needs to be drafted and presented to the six IAHP carriers. He added that the high risk pool model has worked well and has involved carrier participation in its creation and operation. **Mr. Tobiason** said he didn't think there has to be a non-profit collector of assessments, such as used in New Hampshire, since such a collector would only add the costs of having an outside executive administrator.

Dr. Epperly asked if there was anything this group could do with regard to a possible short-term funding request to the Millennium Fund. **Senator Cameron** said he and **Senator Lodge** had not discussed this issue, adding that there were two pots of money that can be accessed through the Millennium Fund: (1) the income fund and (2) non-endowed portion of the Millennium Fund, which has been dipped into in the past to keep from cutting budgets. **Senator Cameron** added that the deadline had passed for Millennium Fund requests. He added that there is some level of expertise present on assessments with the high risk pool; potentially the high risk pool could be asked to help cover some initial costs until the assessments are up and running. The assessment would be used to pay the high risk pool back once they begin to be collected. However, he realizes that the high risk pool paid out more last year than it collected and at some point, additional assessments may have to be collected to keep that pool alive. Double-hitting carriers must be avoided.

Senator McGee commented that the immunization program is quickly running out of time, options and funds, explaining that the normal legislative process is that even if a law is passed and signed by the Governor, it typically does not become effective until July 1, unless there is an emergency clause, which in this case might be appropriate and wise.

Ms. Susie Pouliot said that providers would like to have as much notice as possible regardless of what is done. The Idaho Medical Association (IMA) would like to see some sort of universal vaccination program to continue; however, if a change occurs, notice is very important. **Ms. Pouliot** fears that if the same thing occurs on February 1, 2010, as occurred on July 1, 2009, some physicians will simply opt out of the immunization program. **Senator Cameron** asked if a bill were passed by January 30, 2010, perhaps using the high risk pool to help bridge the gap, whether that would be acceptable to the IMA members, realizing there might be some issues or glitches in the first month or so. **Ms. Pouliot** said that if the IMA membership knew that there is a very clear plan about what was to happen and any problems would be worked out, she hoped that the IMA membership would continue to provide immunization services.

Senator Cameron stated that sometimes it is better to ask for forgiveness than to ask for permission. With that in mind, he suggested that the TPA approach be pursued, regardless of a legal opinion, since time is of the essence. **Mr. Tobiason** responded that he had not been taught that approach in law school. He said that the working group would move as quickly as possible on this issue. If there was something that included out-of-state TPAs and they decided to challenge this, the first thing would be to seek an injunction to prevent the assessment from going into effect. It would be good to know up front what risks might be involved.

Senator Cameron stated that an attempt will be made to schedule another subcommittee meeting and the meeting was adjourned at 10:01 a.m.