

Senate Health & Welfare Committee

Minutes
2009



MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 19, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Coiner, Smyser, and Bock

MEMBERS ABSENT/ EXCUSED: Senators McGee, Hammond and LeFavour

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.

MINUTES: **Chairman Lodge** called the meeting to order, thanked everyone for coming, welcomed newly appointed **Senator Smyser**, introduced legislative support staff and then turned the meeting over to **Vice Chairman Broadsword** to begin presentation of rules for the Department of Health and Welfare.

Rules

16-030-0801 Relating to the rules Governing Child Support Services (Pending/Fee)

Kandace Yearlsey, Child Support Bureau Chief for the Department of Health and Welfare, Division of Welfare, presented testimony relating to the federal Deficit Reduction Act of 2005 requiring states to assess an annual fee of \$25 for each child support case of which the state collects \$500 or more in payments during the federal fiscal year. This fee is not assessed to families who have received temporary assistance for needy families (TANF or TAFI in Idaho). The Act allows states the option to pay the fee, collect the fee from the custodial parent, or collect the fee from non-custodial parent. To minimize the impact of the fee on the children, Idaho chose to assess the fee to the non-custodial parent. In December 2007, The Department issued a temporary proposed rule which was approved in the last legislative session. Ms. Yearlsey asked the committee to accept this rule as final. **Vice Chairman Broadsword** asked if there were questions from the committee. **Senator Darrington** asked how does it work? Ms. Yearlsey responded that there was more success than expected in the first year and we believe that we will be successful in the future. **Senator Darrington** offered that he was pleased to know that this has worked. **Senator Bock** asked if the fees were first imposed last year? Ms. Yearlsey responded yes, fees were first collected October 2007 thru September 2008 was the first year.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Senator Coiner moved to approve 16-030-0801. The motion was seconded by **Chairman Lodge**. The motion carried by voice vote.

16-0303-0802

Relating to the rules Governing Child Support Services (Pending)

Testimony was provided by Kandace Yearsley, Child Support Bureau Chief, Department of Health and Welfare Division of Welfare, stating that the Federal Deficit Reduction Act of 2005 contains a provision that requires each state's Child Support Enforcement Program to conduct reviews at least every 36 months on all child support cases in which recipients also receive Title IV-A (TANF or in Idaho TAFI) benefits. Idaho initiated the 36 month review criteria as part of the Personal Responsibility and Work Opportunity Act of 1996. At that time, Idaho recognized the need to ensure a child support recipient who receives TANF or TAFI benefits that has a child support order that reflects the current incomes of both parents. The requirement was policy. The Act mandates states implement this requirement with the force and effect of law, by October 1 2008. Although Idaho has been following this procedure through its internal policy, this rule puts Idaho in compliance with the federal mandate. Ms. Yearsley asked the committee to approve this rule and asked if there were questions. **Vice Chairman Broadword** asked if Idaho chose not to comply with this rule would Idaho be sanctioned by the federal government and charged a fee? Ms. Yearsley responded that it would be a State plan requirement that we were out of compliance.

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 Lodge moved that the committee accept docket 16-0303-0802. Senator Bock seconded the motion. The motion carried by voice vote.

16-0414-0801

Relating to Rules Governing Low Income Home Energy Assistance Program (LIHEAP) (Temporary)

Genie Sue Weppner, Program Manager in the Division of Welfare stated that Low Income Home Energy Assistance Program (LIHEAP) provides federal subsidies to assist low-income families with their energy needs during the winter months. The proposed changes to LIHEAP will help more families who are struggling during these difficult economic times receive much needed heating assistance. This year Idaho received \$25.6 million in federal funds for LIHEAP energy programs this winter. This is a 54% increase in home heating assistance over last year's funding. In order to utilize these funds to reach as many financially strapped Idaho families as possible, we are asking you to increase the eligibility limits. Eligibility for LIHEAP has traditionally been based on 150% of Federal Poverty Level (FPL). This temporary rule change will increase the eligibility limit to 160% of FPL. With the expanded income guidelines, a family of four can earn up to \$2,827 a month to be eligible, which is an

increase of \$177 per month over former eligibility guidelines. With this increased amount of income allowed, Community Action Agency representatives believe a greater number of Idaho seniors who are on fixed incomes may be eligible for assistance this year. **Vice Chair Broadsword** asked if this would have an impact on the General Fund? Ms. Weppner replied no, that these funds are 100% Federal dollars. **Senator Bock** asked if we wanted to increase this beyond 160%, for example, 200%, would that be possible? Ms Weppner responded that Federally it could be increased to 60% above median income. So I don't know if that is up to 200% of federal poverty level but we could raise it even more than this. **Senator Bock** said if we could increase this, let's just say, to 175% of the poverty level, why wouldn't we do that? Ms. Weppner replied that we took a look at the average payment that we estimated we would make per family. We can get that information by working with Utility companies and we took a look at the number of people that we have in the population that would meet 160% that would be potentially eligible. Our research and statistics department calculated how many individuals we could serve at 160% of poverty and give them an increase in benefit amount that we have because we did increase the benefit amount a little and we increased the poverty level. We anticipate we will spend all of this money with a little left over for crisis for the next year.

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 Darrington moved to approve 16-0414-0801. The motion was seconded by Senator Lodge. The motion carried by **voice vote**.

16-0612-0802

Relating to Idaho Child Care Program (Pending/Fee)

Genie Sue Weppner, Program Manager with the Division of Welfare testified that there are three different sets of rules and five proposed amendments this session that will affect child care. They are: 1) Criminal History-Rules for criminal history check on applicants which adds two crimes and increases the fee; 2) Child Care Licensing - Rules that establish requirements for commercial (13 or more children) daycare licensing aligns fees for criminal history and background checks across divisions for state licensing and certification; 3) Idaho Child Care Program (ICCP) - Rules for the child care assistance program. The three amendments will: change how we calculate self-employment income, require background checks for all ICCP eligible providers, and align record-keeping requirements that support the Fraud Units statute changes that were passed last year. The ICCP provides child care subsidies to low income families who are attending school or working. These subsidies are paid to child care providers who meet certain requirements that make them eligible to receive these payments. The requirements include: 1) Abiding by the licensing requirements of the community in which they do business, 2) an annual health and safety

inspection, and 3) an annual CPR/first aid certification. This proposed rule would require these providers to obtain and pass a background check on all individuals, ages 13 and over, who have direct contact with the children in their care. A change in the Criminal History Unit rules last year now allows us to include background checks as a requirement of ICCP. By requiring these background checks we: reduce the likelihood of a child being harmed while in the care of provider being paid with state and federal ICCP funds and, Parents and tax payers will have assurance that ICCP subsidized children are being cared for in settings that do not allow contact with individuals with a history of violence, child abuse, sexual abuse, substance abuse, or neglect. Today, ICCP parents who have chosen to take their children to an unlicensed child care provider can not be confident that the care giver or their family members have no criminal history. Ms. Weppner then gave 11 examples out of 30 categories of individuals required by Idaho Law to have background checks before they can provide state or federally supported services to vulnerable individuals. Ms. Weppner also stated that Idaho allows child care providers that provide more than 50% of the child care in Idaho to care for children without offering their parents assurance that their children are being protected from abuse and neglect through background checks. The ICCP advisory panel is supportive of this rule. In addition, the department: discussed the intention of implementing a background check requirement with child care providers across the state in the fall of 2007. In early 2008, a stakeholder meeting of legislators, police department officials, child care providers, city licensing staff and child advocates met and provided the recommendation that are incorporated in this rule. Discussions were held with child care home providers in Twin Falls in the Spring of 2008 to identify concerns. A recent statewide survey conducted by the Department resulted in 92% of respondents agreeing that Background checks for child care providers were very important. Information gathered from the survey and discussions lead us to recommend these rule changes. In addition, recommendations were made by these groups regarding the best way to implement the changes so that child care providers would not be burdened with excessive costs associated with background checks for individuals in their facilities. **Vice Chair Broadsword** asked if providers attended the public hearing for this rule that was scheduled to be held on October 2008 in Boise? Ms. Weppner replied that no-one showed up to testify. **Vice Chair Broadsword** asked if correspondence had been received indicating that providers are against this ruling? Ms. Weppner replied they had not received correspondence and that the discussion with providers was made up of meetings that any provider could attend in each Region in the fall of 2007. Usually, 20 to 30 providers showed up at those meetings depending on the size of the community. We did discuss these issues and some of those providers that would be affected would be relative providers. At two of the meetings we actually had relative providers in those meetings that stated they were in business now and could write the expense off against their income and thought it made sense. We have not had a lot of negative response from providers.

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 Coiner moved to approve Docket 16-0612-0802. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

16-0309-0802

Relating to Medicaid Basic Plan Benefits (Pending)

Randy May, Deputy Administrator, in the Medicaid Division, Department of Health and Welfare, explained that these rules outline the rules and responsibilities of Credentialed Mental Health Clinics and Mental Health Agencies throughout the State. The purpose of these rules is to protect the health and safety of Medicaid clients accessing those mental health services. It does that by outlining and clarifying the process for credentialing Medicaid Mental Health Providers throughout the State by ensuring: Providers have the right individual qualifications to provide services; have the proper Agency or Clinic policies and procedures defined to competently deliver those services; and have the proper quality control measures in place to ensure quality services and meet Medicaid requirements. These rules were the product of informal negotiated rulemaking and discussion among the Department, the Department's contractor Business Psychology Associates and mental health providers across the State. In 2006, the Legislature approved Medicaid establishing a Mental Health Credentialing Process. During 2008, two key events took place; first, the Legislature approved a decision unit shifting 15 State staff from FACS to Medicaid, including 6 State staff dedicated to Mental Health Credentialing. Medicaid finally had sufficient opportunity to renegotiate the Business Psychology Associates contract. We shifted their focus from being a full service contractor that did both the paperwork review and the on-site surveys to dealing primarily with the paperwork reviews and applications. The Department staff assumed responsibility for the on-site reviews of Clinics and Agencies. We met with representatives from the Provider community in late July and went through informal negotiated rulemaking which included line-in line-out changes. The revised rules were posted on an external Health and Welfare website and provided a link to this site on the State's Administrative rules website. We have not received any negative comments on our proposed changes. Feedback from the Provider community has been very positive. **Senator Bock** stated that it appeared the Department would save a lot of time with the revised credentialing process. **Senator Bock** then asked what is being given up in terms of the kinds of inquiries you are making with those entities seeking credentials under this program versus the former program? Mr. May stated that they came to over-rely on the credentialing contract to do that. For example, to process an application from Northern Idaho, the same two people reviewing the paper application would also conduct the on-site review. The Department would have to pay travel time for these individuals. By shifting the focus, we have individuals doing the paper review and we have individuals stationed in Northern Idaho do the on-site review. **Senator Bock** stated in doing this new process, are you collecting less information about the providers than you did before? Mr. May replied no, it is the same basic process, we just have different people massaging the data. **Senator Darrington** asked, if that onsite visit is in a Provider's home, if they have a mother-in-law apartment, a garage that's been

converted or the parlor off the front room, is that allowed as a clinic? Mr. May responded, that is not allowed.

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 Bock moved to approve Docket 16-0309-0802. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

16-0506-0801

Relating to Mandatory Criminal History Checks (Pending/Fee)

Steve Bellomy, Bureau Chief of Audits and Investigations for the Department of Health and Welfare, gave testimony stating there are three sets of rules and five proposed amendments this session that will affect child care: They are as follows; 1) Criminal History - Rules for criminal history check on applicants. The amendment adds two disqualifying crimes and increases the fee which I am presenting now; 2) Child Care Licensing - rules that establish requirements for commercial (13 or more children) daycare licensing, and certified care (7 to 12 children). The amendment will align fees for criminal history and background checks across divisions for state licensing and certification; 3) and Idaho Child Care Program - Rules over the child care assistance program. The three amendments will: change how we calculate self-employment income; require background checks for all ICCP eligible providers; and align record keeping requirements that support the Fraud Units statute changes that were passed last year. In this presentation, I will be discussing the Mandatory Criminal History Check rules. This amendment adds two disqualifying crimes and increases the fee for obtaining a criminal history check. We seek to add two crimes that would disqualify an applicant for 5 years. 1)for the crime of identity theft, as defined in Section 18-3126, Idaho Code; 2) attempted strangulation, as defined in Section 18-923, Idaho Code. Fee increase: Finally, we seek to increase the fee charged for each criminal history background check from \$48 to \$55. Idaho Code, section 67-5225(2) requires the department to set the fee at an amount that covers the cost of doing the criminal history background check. In Fiscal Years 2006 through 2008, our costs were offset by a grant funded pilot project that allowed us to create an automated on-line application and background check system that reduced our processing time from two weeks to two days. During the pilot project two things happened to reduce the cost of each background check. First, the total number of applications increase by 75%, from 13,000 to 23,000. Second, the grant paid for all of the new background checks and covered the cost of equipment, operations, and payroll to implement the new system. In FY 2009, anticipating the loss of grant funds and slight drop in background checks, we took steps to reduce our cost. We reduced one position and made significant reductions in our operating costs. Therefore, we are requesting an increase of the fee to \$55. In summary, the amendments to

add the two crimes are needed to make sure that vulnerable children and adults are not exposed to potentially dangerous felons and the amendment to increase the fee from \$48 to \$55 is needed to cover the cost of processing an application and obtaining a criminal history that is fingerprint based. **Chairman Lodge** commented that she appreciates the fact that this will not increase the State General Fund. **Vice Chair Broadsword** said, for clarification, in the ICCP Program, the providers were paying for their own criminal history check, are they not paying for their own in this instance? Mr. Bellomy stated that they are and that this rule covers all criminal background checks including ICCP. **Vice Chair Broadsword** asked if they worked with the Idaho State Police as a Department and are they the provider of the actual background check such as fingerprints and all that needs to be done before it goes to the Department? Mr. Bellomy answered that was correct to a degree. We process the application, conduct the interview, rull the fingerprints and complete the application. The fingerprints are then electronically transmitted to the Idaho State Police and from there to the FBI and then back to us. **Vice Chair Broadsword** asked how much of the \$48 fee goes to the Idaho State Police? Mr. Bellomy responded that a little over half (\$29.25) of the fee goes to the ISP and the FBI.

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 that the committee approve Docket 16-0506-0801. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:00 PM.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 20, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Coiner, Hammond, Smyser, and Bock

MEMBERS ABSENT/ EXCUSED: Senators McGee and LeFavour,

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.

MINUTES: **Chairman Lodge** called the meeting to order at 3:00 PM and welcomed participants to the meeting. **Senator Lodge** then turned the meeting over to **Senator Broadsword** to begin presentation of the rules.

RULES

16-0309-0709 Relating to Medicaid Basic Plan Benefits (Pending)

Pat Guidry, Program Manager of the office of Mental Health and Substance Abuse in the Division of Medicaid. Ms. Guidry said she was pleased to present rules written to enhance mental health services. The 2008 Legislature approved these rules as temporary so that the Department could implement the services immediately. These rules allow qualified mental health providers to offer outpatient family therapy sessions without the participant present. In the provision of family therapy services, sometimes it is appropriate for the therapist to meet in therapeutic session with the participants family members without the participant present. This is an aspect of treatment consistent with various models of intervention including functional family therapy. It is endorsed as an evidence based practice from the substance abuse and mental health services administration. The federal agency charged with the responsibility of ensuring quality and facilitating recovery through the promotion of best practice standards. In conjunction with this new benefit an existing benefit collateral consultation was modified so that it could be performed telephonically in mental health clinics where previously it was to be conducted face to face. Also, the use of the collateral contact service as a method to meet with multiple families in a support group was eliminated as this use was not consistent with direction from the Center for Medicare and Medicaid. This further supports the opportunity for providers to engage in evidence based practices such as functional family therapy. **Representative Loertscher** had approached Medicaid

accompanied by a mental health provider to promote the adoption of the change in rules. Medicaid has worked with the mental health providers association in other unaffiliated mental health agencies that receive medicaid reimbursement to craft these rules presented today. This benefit is an important component of the ongoing work of developing a robust continuum of care for participants. Claims data reveals that this benefit is being used across the State. The expectation is that by continuing to upgrade the mental health benefits package with evidence based practices the participants will be able to access more effective services that ultimately result in shorter length of stay in treatment .

Senator Darrington stated that he was not finding reference to an FFT within the rule. Ms. Guidry responded that in the medicaid rules we attempt to not prescribe specific types of therapies that are used but we do try to build a framework so that those therapies can be used as an option if the therapist chooses. **Senator Bock** said you used the term evidence based with respect to these rules, could you describe for me what you mean by that within this context? Ms. Guidry responded that evidence based is the term used internationally to indicate that a service has been essentially vetted. It's been researched, documented as effective and published. **Senator Hammond** stated that he was a little confused about what this rule actually accomplishes, "I'm a 6 year old, tell me what this rule does" he asked. Ms. Guidry responded, essentially in the benefit package, medicaid had already had in there "family therapy", however the specification of that service was the participant must always be in the room as part of the family therapy session. This rule allows that the participant can be outside of the room which is a central component to some of the evidence based practices of how to conduct family therapy. This is an effective way to proceed through the therapy process. **Senator Hammond** said so you are then meeting with the rest of the family and not the participant, is that what you are saying? Ms. Guidry responded that was correct. **Vice Chairman Broadsword** stated that it appeared the limitation (04.) on page 166 had been moved to the bottom of page 168 (10). Ms. Guidry responded that this does not change the benefit. **Vice Chair Broadsword** then asked if it was 12 hours in addition to the 26 hours of services that the mental health clinic provides for that patient? Ms. Guidry responded that is not in addition. In the basic plan there are 26 hours of services available and that remains. **Vice Chair Broadsword** asked if this was going to be an increase or stay level with the current expenditure that we provide for this service? Ms. Guidry responded we expect no increases. **Senator Bock** asked prior to the adoption of this rule would you not be able to provide these services? Ms. Guidry responded that prior to this rule, the only family therapy benefit required the participant to be present.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment #1).

MOTION

Senator Darrington moved that the committee adopt 16-0309-0709. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0310-0707

Relating to Medicaid Enhanced Plan Benefits (Pending)

Pat Guidry, Program Manager of the office of Mental Health and Substance Abuse in the Division of Medicaid. This is the companion Docket to the rule that was just reviewed. (see attachment #2)

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 Coiner moved that the committee adopt 16-0310-0707. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0309-0801

Relating to Medicaid Basic Plan Benefits (Pending)

Pat Guidry, Program Manager of the office of Mental Health and Substance Abuse in the Division of Medicaid. Ms. Guidry presented rules written to add a substance abuse benefit to the Medicaid program. These rules are temporary with an implementation date of November 1, 2008. These rules describe program eligibility requirements, provider requirements, and service descriptions and limitations. The 2008 legislature allotted funding so that Medicaid could partner with the Division of Behavioral Health to provide Medicaid coverage of the existing substance abuse services managed by Division of Behavioral Health. Medicaid has already received approval from CMS for the state plan amendment required to proceed with this new benefit. During the public comment period following the publication of these rules Medicaid received no comments. **Vice Chair Broadsword** queried where do the funds come from to fund these services? Ms. Guidry responded it is her understanding that the legislative funds that were allotted to the Division of Behavioral Health. Prior to that action there has not been Medicaid substance abuse spending. **Vice Chair Broadsword** asked are these benefits federally funded or will they come from state general funds? Ms. Guidry responded that they will receive the federal match for these services. **Vice Chair Broadsword** asked for clarification regarding the language a qualified substance abuse treatment professional is one who has 1040 hours of supervised experience providing substance abuse, is that consistent with other section of code that describes the provider? Ms. Guidry responded yes. **Senator Hammond** asked if by providing this treatment are we in essence heading off some folk who might otherwise be housed in one of our state dormitories on the south side of Boise? Ms. Guidry responded that due provision of this service this does offer an appropriate alternative to what may be happening at this time. **Vice Chair Broadsword** asked if in the basic plan does the participant have a co-pay? Ms. Guidry responded there is not a co-pay. **Vice Chair Broadsword** asked if the 5 year lifetime cap was consistent with other Behavioral Health rules? Ms. Guidry responded yes this is consistent with how they operate the program. **Senator Bock** asked with regard to the participants, are they being assigned to this program by other institutions

or are they self identified and come to you requesting these services? Ms Guidry responded the source of the referrals could be any other provider type, any other situation or could be self identified. **Vice Chair Broadsword** asked if participants had to be qualified medicaid recipients to access this service? Ms. Guidry responded that this is not a medicaid eligibility process. Participants will have to be a medicaid participant and then access the service.

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 that the committee approve 16-0309-0801. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0309-0708

Relating to Medicaid Basic Plan Benefits (Pending).

Pat Guidry, Program Manager of the office of Mental Health and Substance Abuse in the Division of Medicaid. Stated this rule increases the opportunities for physicians to deliver outpatient mental health services via telehealth technology, also referred to as telemedicine. These rules were approved last year as Temporary so the Department could implement the services immediately. These rules allow physicians to perform telemedicine mental health services in any location in which they are already allowed to practice. In 2003 Medicaid began working with the Cooperative Telehealth Network at the Institute of Rural Health at the Idaho State University to explore the viability and appropriateness of developing telemedicine services as a Medicaid benefit. Beginning in 2004, Medicaid has allowed reimbursement for telemedicine services performed by physicians in mental health clinic settings only. As of January, 2008, there had been zero utilization. We attributed the under-utilization to the fact that no mental health clinic proprietors were able or willing to invest in the hardware and software required to deliver the services. With these rules physicians who are interested in using the technology to deliver mental health services are able to partner with business entities that already have the equipment, usually hospitals, to provide a complete spectrum of mental health intervention into areas of the state that otherwise would not have psychiatric services of this caliber. The three services that are available to be delivered through this technology are psychiatric diagnostic interview, evaluation & management with brief psychotherapy, and pharmacological management. There are approximately 14 telehealth sites in the State and approximately 12 more in the planning. There are only 95 psychiatrists in Idaho, 4 of whom list themselves exclusively as Child Psychiatrists and a limited number of primary care physicians who deliver mental health services. While some areas of the state are dense with mental health agencies there are other parts of the state whose residents must travel great distances to access services. Telehealth technology maximizes the scarce resource we experience in Idaho of having psychiatric services performed by a physician. Medicaid published an Information Release in January, 2008 that outlined the specifications for ensuring HIPAA compliance for privacy

and the requirements for meeting quality of care standards. These are the same standards and specifications adopted by Medicare for the provision of telemedicine services. The fiscal impact was estimated to be minimal as research has shown that in other states when telemedicine services become available there has been a very slow response to accessing the service and the utilization is minimal. Additionally, some savings in transportation costs was expected since participants would be obtaining services closer to their homes. As expected the utilization of this service has been quite low. Since this service was approved last January, one hospital, Port Neuf General Hospital in Pocatello, has been offering the service and billing Medicaid. Approximately 10 participants have accessed the service. DHW has a plan in development for using the service. Medicaid continues to work with ISU Institute of Rural Health to ensure the service is kept up-to-date with national developments in the field and to continue addressing the need to increase access to mental health services for those participants who do not live in urban areas.

Senator Bock asked when you say that there is no or minimal usage do you mean that there are appropriated monies out there that were not accessed for this program or is there no unused pot of money as a result of the no usage? Ms. Guidry responded there was no fund allotted for this benefit. They anticipated that individuals would access this service anyway but they would travel a great distance to get it. So, they anticipated that if they could access the service closer to their home we might actually realize a cost savings in transportation. **Chairman Lodge** stated that she knows of the connection between Lewiston and Orofino, State Hospital North, which she witnessed in operation and it was great and this will save us the cost of having a psychiatrist on staff at the State Hospital North which is very beneficial to the State. It is her understanding there are five locations that provide this service. Where are these located? Ms. Guidry responded that she did not have the information with her, however, she would provide a list to the committee. **Chairman Lodge** expressed that this is one of the most exciting things she has seen in a long time. Besides connecting our hospitals to other services, rural Clinics etc., it allows our hospitals to connect to hospitals outside of the State. For example, St Al's is connected with a hospital in St Louis for diagnostic determinations. Very exciting. **Vice Chair Broadsword** noted that there were a number of restrictions listed relating to what constitutes a telehealth, for example, it cannot be a webcam or video phone, is this because they are not synchronized? Ms. Guidry responded that these restrictions have to do with security issues.

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 for approval of Docket 16-0309-0708. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0310-0706

Sharon Duncan, Bureau Chief for the Division of Medicaid Long-Term Care Program. Ms. Duncan said during the 2007 Legislative session, HB167 clarified the difference between a Personal Assistance Agency and a Fiscal Intermediary Agency. A Fiscal Intermediary Agency or FI Agency is defined as an entity that provides services allowing participants receiving personal assistant services, or his designee, or legal representative, to chose the level of control he/she will assume in recruiting, selecting, managing, training, and dismissing a personal assistant, regardless of who the employer of record is and allows the participant control over the manner in which the services are delivered. This model supports consumer directed services. A personal assistance agency is defined as an entity that recruits, hires, fires, trains, supervises, schedules, oversees quality of work, takes responsibility for services provided, provides payroll and benefits for personal assistants working for them and is the employer of record. The original legislation required entities providing fiscal intermediary services to become personal assistance Agencies as well. This created conflict for the agencies, consumers and the Department of Health and Welfare. The changes to the statute under HB167 addressed these issues. Currently, FI Agencies do not have to become a personal Assistance Agency to provide FI Agency services for participants. These rules changes will align the Medicaid Enhanced Plan rules for Personal Assistance Service Agencies with *Idaho Code* that went into effect July 1, 2007. These Rules were a result of discussions with the State Independent Living Council. A public hearing was held on November 20, 2007 and no comments were received.

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 Bock moved that the committee approve 16-0310-0706. The motion was seconded by **Senator Darrington**. The motion was carried by **voice vote**.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:50 P.M..

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 21, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, and Bock

MEMBERS ABSENT/ EXCUSED: Senator LeFavour

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RULE

16-0310-0801 Relating to Medicaid Enhance Plan Benefits (Pending)

David Simnitt, Program Manager, Division of Medicaid, Department of Health & Welfare, stated, in December of 2007, the federal Centers for Medicare and Medicaid Services (also known as CMS) issued new federal regulations for targeted case management. These federal case management regulations set the parameters for our service coordination programs in Idaho. The new federal regulations went into effect in March of 2008 but not without controversy at a national level. Many advocate groups and provider organizations objected to these regulations and Congress eventually put a moratorium on some portions of the regulations. That moratorium is set to expire in April 2009. The Department of Health and Welfare is continuing to work with CMS to determine the changes we need to make to our service coordination program and the required time-frames for implementation of these changes. The pending rules before you today will ensure that Idaho maintains ongoing compliance with CMS requirements and federal regulations governing the Medicaid program. These rules are the result of many months of work and negotiation between the Department and stakeholders. In March of 2008, we conducted negotiated rulemaking to aid in development of the proposed rules. In October 2008, we published the proposed rules and held public hearings across the State to receive additional feedback and recommendations for improvement. We were able to incorporate many of those recommendations into the pending

rules before you today. The changes you see in these pending service coordination rules fall into three main categories. The first category of changes are - Changes required by CMS. These changes include: shifting from a bundled, flat monthly rate methodology to a fee-for-service, 15-minute increment methodology detailing provider qualifications based on the population being served. Ensuring that participants have one, comprehensive service coordinator. Adding requirements that providers avoid conflicts of interest, ensuring a participant has free choice of providers, and making sure that Medicaid dollars are not used to pay for services that are integral to another federal, state, or local programs. The second type of change to these rules are - Changes recommended by stakeholders. For example, removing prior authorization requirements for children's service coordination, adding coverage of assessment and plan development for children's service coordination, and making the Idaho Infant Toddler Program the statewide lead for service coordination for infants and toddlers And finally, we made some editing changes to: Clarify existing policy requirements. Such as: Removing definitions of terms that were not used in the service coordination sections and adding other definitions to ensure common understanding and consistent application. Removing redundant or confusing requirements, and reorganizing some sections to reflect how a typical participant moves through the program – from eligibility determination, to service coordination need's assessment and plan development, to monitoring of the plan, and back to annual eligibility determination. In conclusion, the pending rules will ensure that we maintain ongoing compliance with federal regulations and will improve the overall quality and consistency of the service coordination program in Idaho.

Vice Chair Broadsword asked if there was anyone that wished to testify on this rule.

Jessica R. Hunt, Service Coordinator, Advocates for Inclusion stated, in regard to the billing unit changes, it is stated that “two-way communication between the service coordinator and the participant, participants' service providers, family members, primary care givers, legal guardian, or other interested persons” are reimbursable. The Provider reimbursement section goes on to state “referral and related activities associated with obtaining needed services as identified in the service coordination plan” will be reimbursable. Nowhere in the reimbursement section does it state that the paperwork completed will be reimbursable. The State of Idaho has, over the past few years, increased the work load of service coordinators. They have implemented a progress report program where service coordinators have to fill out a State generated form to show the child's progress on the past year's goals and objectives. This is a long, drawn out process. The progress report process, after working on it for the past few years still takes at least an hour to complete. After completing the person centered planning form and writing the child specific plan, takes an hour. Copying the plan and packet for the Department takes time. The Department asks that we to mail the plan, progress report and authorization sheet to doctors, families and schools, and they want it documented. If they are asking us to do this, why is it not written into the reimbursable plan? If the State is asking us to provide

quality services to families, they need to compensate us accordingly.

Senator Darrington asked what specific rule was she referring to within that multi-page rule? **Jessica Hunt** responded that she did not have the information. **Senator Darrington** remarked that he would appreciate from those that testify to specify the paragraph that they are referring to in the proposed rule.

Vice Chair Broadsword stated it was her understanding, based on briefings she attended with the Department, the rate was no cut but revised the rate from a flat monthly to a 15-minute incremental rate. Is this correct **Mr. Simnitt**? **Mr. Simnitt** responded, currently it is being paid in the flat monthly rate and any activity having a person under case load would trigger that flat rate. The philosophy behind the flat monthly rate is that things sort of balance out across different participants where you have high users and low users so you end up with an adequate and fair reimbursement rate. What the Department is proposing to switch to is the 15 minute increment rates for individuals who require very little service coordination we would pay for based on those 15 minute increments. Individuals who require higher amounts of coordination would pay for that. **Vice Chair Broadsword** asked, **Mr. Simnitt**, can you address how an agency compensates for the extra book work? **Mr. Simnitt** responded the reimbursement rate actually takes that into consideration and it starts with the average salary of the person who is providing the direct service, adds in components for non productive time and it is those related activities such as writing your notes etc. planning to go to meetings, travel time, those types of things that are not directly reimbursable are calculated into the proposed reimbursement rate.

Senator Darrington asked, do I understand correctly that the 15 interval is an absolute requirement of CMS? **Mr. Simnitt** responded yes, that is correct. **Senator Darrington** responded thank you and if that is a requirement of CMS, it takes away our options.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1 & 1a).

MOTION

Senator McGee moved that the committee approve Docket 16-0310-0801. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

16-0310-0802

Relating to Medicaid Enhanced Plan Benefits (Pending)

Sheila Pugatch, Principal Financial Specialist, Division of Medicaid, Department of Health and Welfare. Ms. Pugatch said the Department is changing these rules to clarify how reimbursement rates for nursing

facilities are calculated so that providers can effectively manage their facilities. The Department and the Nursing Facility Prospective Payment Oversight Committee worked together to make changes to these rules to make them more understandable to both the Department and to the providers. The rule changes remove language regarding specific dates to specify the rate base year. The rule also defines the factors for determining a distressed facility and requires an annual financial review of the facility. The current prospective payment system has been in place for approximately eight years. The current prospective payment system provides a fair reimbursement that is current. The reimbursement is a daily rate and is based on a case mix reimbursement system which adjusts to the needs of the participant. The daily rate is based on historical cost and inflated forward to today's daily rate in order to more closely reflect today's cost to care for the participant. The daily rate is adjusted quarterly based on the case mix of the individuals in the nursing facility. In order for a facility to be considered distressed, the facility needs to be located in an under-served area or address an under-served need. The Department considers an under-served area as when the nursing home bed capacity in the area is too full to accommodate moving participants from the distressed facility to a near-by facility. The Department considers an under-served need as a need that cannot be accommodated by moving participants from the distressed facility to a near-by facility. The Department also uses discretionary factors such as making sure the facility has used prudent spending patterns and such as making reasonable attempts to correct their financial problems. The summary of the changed text in these rules: 1) To clarify how the quarterly prospective rates are calculated; 2) removes references to specific dates as they relate to calculating the prospective rate; and 3) adding distressed facility determination criteria. In conclusion, since the prospective payment system went into effect, nursing home rates have stayed in check with the upper payment limit of no more than 2% above the annual inflation rate. The growth in the number of individuals eligible for Medicaid who reside in nursing facilities has remained fairly flat in the past few years with more elderly Medicaid recipients choosing to live in their own homes and communities under one of the department's home and community-based waiver programs.

Vice Chair Broadsword noted that a public hearing had been held in October and asked if the hearing was attended by anyone? **Ms. Pugatch** responded that no one had attended.

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 McGee moved that the committee approve Docket 16-0310-0802. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

Paul Leary, Deputy Administrator, Medicaid, Department of Health and Welfare, stated the Department is asking the Committee to extend the temporary rule in docket number 16-0310-0902.

Vice Chair Broadsword asked **Mr. Leary** if the committee extends this as a temporary rule, will it come back to the Legislature next year to be reviewed again as a pending rule, is that correct? **Mr. Leary** responded, yes, that is correct. **Vice Chair Broadsword** stated that those who had concerns about hearing it again will hear the rule again next year if it is passed. **Mr. Leary** agreed and continued with his testimony. In September of last year, through Executive Order 2008-03, Governor Otter directed all state agencies to hold back 1% of their general fund budgets because of the bad economy. The rules in this docket reduce the maximum service hours that a provider can bill for Medicaid participants on the Enhanced plan receiving Developmental Disability Services. This change represents a part of the department's response to meet the Governor's Executive Order. The service limit for Developmental Disability Services is being reduced from 30 hours per week to 22 hours per week. No services are being eliminated. The following, which are in the handout prepared for the committee, covers some key points about these changes. Because of the holdback, the weekly limit for developmental disability services provided by developmental disability agencies (DDA) is being reduced from 30 hours to 22 hours. It is estimated that this will save approximately \$.8 million in state general funds and \$1.8 million in federal funds for a total of \$2.6 million. It is estimated that 1,500 children and 620 adults currently utilize more than 22 hours of service per week. This is a 1.6 hour reduction in the daily maximum for these services.

Mr Leary said Intensive Behavioral Intervention (IBI) plans that have been prior-authorized by the department will be honored at the levels approved. Services provided by school-based service providers are not counted in the cap and do not reduce the amount of service available through a DDA. Physical, speech and occupational therapies provided through outpatient hospital settings or by independent therapists are not counted in the cap. Families who have children under the age of 21 and younger with significant disabilities that need services above the benefit limits may obtain additional benefits through EPSDT (Early, Periodic, Screening, Diagnosis, and Treatment). Other options for adult participants include adult day care or additional hours of supportive living, if appropriate. Additionally, adult participants on our developmental disability waiver have the option to self direct – if they chose this option they determine how to use their budget to best meet their assessed needs. Child care services may be an appropriate resource when children need supervision and not therapy. These services are not a Medicaid benefit and need to be paid by families. If the family meets criteria they can utilize the Idaho Child

Care Program which has a sliding fee schedule based on the family's income. Public hearings were held in Lewiston, Boise and Idaho Falls and were well attended. Parents expressed concerns that the reduction in available service hours would reduce progress of their children and possibly result in the need for institutional care. Provider comments included the following: 1) Reducing hours in the end increases costs; 2) without alternatives in Idaho service delivery may end up in institutions; 3) Reducing hours results in loss of skills and continuity of training; 4) If we make cuts during a difficult economy, raise them back when the economy gets better. The Department understands the concerns expressed by both parents and providers. The measures that I discussed earlier assure that any child who needs therapy over and above the 22 hours per week will get that therapy. If there are other more appropriate services that will meet the needs of the participant the department will work with the participant to obtain those services. In summary, these rules reduce the Medicaid Enhanced Plan weekly maximum service limits for Developmental Disability Services and are part of the Department's response to the Governor's Executive Order for budget hold backs.

Senator Darrington said there are a lot of people in this room and in the hallway that do not want these hours cutback from 30 to 22 hours. He asked **Mr. Leary** if they have presented to you a viable alternative not to cut and how you can meet your mandate? **Mr. Leary**, responded, he was unaware of a presentation as such.

Vice Chair Broadsword stated when she attended the meeting with the Department, there was a list of suggested cost savings from the Providers along with the Departments response to those suggestions, would this be what **Senator Darrington** is referring to? **Mr. Leary** responded that there is a list of suggestions that are over and above four department cutbacks but they were more global in nature.

Senator Bock stated we obviously have some budget issues in the State and the Governor directed the Department of Health and Welfare/Medicaid to cutback expenditures. What were the procedures for deciding what programs to cut? **Mr. Leary** responded in the Medicaid division we looked at those areas that we had access to and the cuts we are talking about were for State fiscal year 2009. There are certain areas where we have no options. For example, fees that are regulated by the federal government or set in statute. The Department looked at the services that we could and we also looked at what percent they contributed to the budget reduction. **Mr. Leary** referred to a chart that Leslie Clement used during our presentation to JFAC presentation; part of our cuts are in hospital reimbursement rates, aimed at surgical center rates. Hospitals represent 25% of our budget and the percent of the budget reductions are 29%. On a comparison, developmental services represents about 13% of our budget and these cuts represent about 9% of all reductions. **Senator Bock** responded, he was not entirely sure what you mean and I would like some clarification as to what influence the

percentage had on what programs you decided to cut. Mr. Leary answered, what we tried to do was make sure that we weren't having disproportionately paid service. (Attachment 3)

Vice Chair Broadsword said we have a number of people here to testify on this Docket and we will go down the list of those that have signed in.

Mike O'Bleness, President and CEO of the Developmental Workshop, Inc., Idaho Falls, Idaho, encouraged the committee to reject this rule.

Cathy Rutyne testified in opposition to the rule.

Cindy Hamlin provided written testimony (attachment 3A) opposing this rule stating that the cut in hours will impact her son and her family.

Mark Reinhardt testified that he is an individual with a developmental disability known as asperger's syndrom. If services are lost, results would be dire. Worst case scenario - homelessness or institutional care. In the process he will become a burden to his family and he would like to add that with these services he gets to go to Boise State to follow his piece of the American dream. He opposes this rule. **Vice Chair Broadsword** asked how many hours of services are you receiving in a week? **Mr. Reinhardt** responded that currently he was receiving 22 hours but before it was 24 hours.

Chairman Lodge asked Mark what he was doing at Boise State? **Mr. Reinhardt** responded that due to finances, he is attending the College of Western Idaho. When he returns to Boise State he wants to be a journalist. **Chairman Lodge** asked what services are you receiving now? **Mr. Reinhardt** stated he was receiving DDA, case management TSC services and he discussed his concerns already about PSR hours with Senator Stegner.

Senator Bock asked, how old are you? **Mr. Reinhardt** responded 23. **Senator Bock** asked, when did you graduate from High School? **Mr. Reinhardt** stated he graduated from Capital High School in 2005. **Senator Bock** inquired if this disability delayed graduation. **Mr. Reinhardt** responded his graduation was delayed by one semester.

Katherine Hansen, Executive Director, Community Partnerships of Idaho, Inc. submitted written testimony (attachment 3E) in opposition to this rule.

Richelle Tierney submitted written testimony (attachment 3F) in opposition of this rule. **Ms. Tierney** stated that she and her husband have three children one of which suffers from autism. During the week, this child receives two hours of developmental therapy after school and has

made remarkable progress. The proposed cut in hours would not affect this child during the school year, however, would during the summer months. **Vice Chair Broadsword** asked does this child received school based services? **Ms. Tierney** replied yes. **Vice Chair Broadsword** asked how many hours per day? **Ms. Tierney** responded the child attends school full time. Because of IBI training, this child has been mainstreamed into a regulated classroom. **Vice Chair Broadsword** queried how would your child get 30 hours of service if he is a full time student? **Ms. Tierney** replied during the school year he receives 10 hours. The summer months are of concern. **Vice Chair Broadsword** stated that other parents have voiced the same concern. This is an issue we need to work on to find a different way to do things so they don't drop off in the summer.

Senator Darrington asked, are you suggesting that this program should not take it's share of cuts in the overall reduction? **Ms. Tierney** responded that with some work or redesign there wouldn't be the cuts that impact the family as much. **Senator Darrington** stated the question is are you saying that this program should not take its share of the Medicaid cuts? **Ms. Tierney** replied yes. **Senator Darrington** asked how do you suggest we deal with the people in the other programs that would have to take double their share of the cut? **Ms. Tierney** responded, that she did not know. **Senator Darrington** stated that now you know the committee's dilemma.

Tracy Warren, staff to the Idaho Council on Developmental Disabilities (ICDD), stated that they are federally mandated to review all fee laws in the State that affect people with developmental disabilities and their families. ICDD is a 23 member council, appointed by the Governor, the majority of which are parents of children with developmental disabilities and adults with developmental disabilities. ICDD is supportive of the testimonies offered today. ICDD is grateful to the division of Medicaid for listening to people and working very hard to make cuts that have impacted people directly at a minimum. ICDD is grateful that this docket is extending this temporary rule and that it will be back next year. ICDD would not like to see this rule become permanent. ICDD understands that children under the age of 21 and need more than the 22 hours of services can apply through the EPSDT, but for adults with developmental disabilities they request that the limit be a soft cap as well. This would permit those individuals to appeal for additional services other than adult day care based on their needs. If we receive the federal match we are expecting, we would ask that these services be restored back to the original cap.

Michele Weaver, President, Idaho Association of Developmental Disabilities Agencies (IADDA) submitted written testimony (Attachment 3H) in opposition of this rule.

Amber Grant submitted written testimony (Attachment 3 I) in opposition

of this rule.

Sandi Crossno stated that she is the mother of a 20 year old son who receives services through DDA and also through job coaching as well as medicaid transportation. **Ms Crossno** asked to address the committee in a different way. Why can't they keep the services in place for our family members so they can be active in the community, therefore, they can be independent and not be institutionalized because they would like to give to their community but would not be able to do that without supports in place. What happens when our family members do not receive services, they get in trouble with the law. **Ms. Crossno** stated that she recently testified for a young man about the services in the State in a court case he is now sitting two years in a State Penitentiary for a petty crime. They have increased mental issues due to not feeling that they are part of their community. **Senator Darrington** asked, is this fellow in the penitentiary for a misdemeanor? **Ms. Crossno** responded that from what she was told yes. **Senator Darrington** stated that he didn't know that was possible, and requested more information be furnished to the Chairman of the committee on the misdemeanor that was committed and how he went to prison on this misdemeanor. **Ms. Crossno** reply that they tried to get his case moved to mental health court, however, because of his developmental disability he would not be able to pass the classes that were required of him to be able to go through mental health court. **Ms. Crossno** continued with her testimony stating the individuals would become more dependent and would not be able to hold jobs and overall this strips them of their dignity and self esteem. With services, our disabled family members hold jobs, participate in community activities and contribute to the community. For example, we adopted our son at age two, finding out that he would never go to college, would never graduate high school, would never walk, he would likely be institutionalized and he would have severe problems. Due to early intervention and developmental assistance in school with his education, I am here to say that my son walks without leg braces, my son graduated with a regular diploma and he also graduated from the Boise Leadership Academy. These services do pay off in the long run. As an adult, my son is living on his own. A developmental tech visits every day which allows him to maintain employment, be active in his community by volunteering many hours with Wishing Star Foundation, homeless shelters for men women and children and he also pays taxes and contributes to social security,

Jan Malone testified in opposition to this rule. **Kristin Cook** testified in opposition of this rule.

Pam Matthews stated that she was here today to advocate the continuation of services for children and young adults with disabilities. She said she was new to Idaho and has lived in the state for two years and she was very happy to be here. **Ms. Mathews** stated that she has a 16 year old child and an 11 year old child. They came from areas that do not provide the all the services that Idaho does. When she found out there were services available to help them it was extraordinary, it was like the pot of gold at the end of the rainbow. In the two years that they have

lived in Idaho, her children have come quite a long way. She has two children that are at either end of the spectrum. One has medical nature disabilities which qualified him for services. He has serious brain seizures and has had a series of brain surgeries which have left him with deficits. The services they received, some of which they received in Idaho, have been instrumental in getting the help and resources they need. Ms. Mathews said her other son has autism and he is receiving IBI therapy and is working hard to get a job to become a contributing member and tax payer in the State of Idaho. **Chairman Lodge** asked where did you move from? **Ms. Matthews** responded Vancouver, Washington and they only provide Katie Beckett services for very ill children, medical in nature.

Charlene Quade submitted written testimony (Attachment 3 N) in opposition of this rule.

Taryn Quick testified in opposition of this rule. **Sandy Stickland** testified in opposition of this rule.

Kim Hunter testified in opposition of this rule.

Vice Chair Broadsword asked **Mr. Leary** to address some of the concerns expressed. **Mr. Leary** stated the Department is not removing any benefits but are lowering the cap on some benefits and for children that have a need for those services through our EPSDT (Early, Periodic, Screening, Diagnosis, and Treatment) program they can get those services. It is appreciated that it is not an easy process to go through, but the Department has just gone through a streamlining process for the waiver process it's online working with the Divisional Family and Children's services who are really the gatekeepers for children's developmental disability services. The Departments intent is to make sure that those children that need those services are getting those services. **Vice Chair Broadsword** thanked **Mr. Leary** and expressed appreciation for his participation.

Senator Coiner asked if the Department looked proportionately making cuts throughout the spectrum as opposed to just cutting them passively? **Mr. Leary** asked did he mean the spectrum of developmental disabilities services or the whole spectrum of Medicaid? **Senator Coiner** said we have a range of people that are utilizing services from across the State from 10 hours to 30 hours. Did you look at the proportional cut throughout that range of 10% for everyone as opposed to just lowering the cap on those folks that are using the maximum 30 hours? **Mr. Leary** responded no because that is a difficult thing to look at since there are assessments going on all the time and so the needs change. **Senator Coiner** asked if it would be possible knowing the assessments, if a person was assessed at 20 hours and there was a 10% reduction of the 20 hours reducing the hours to 18 which would be proportional throughout the range of services as opposed to just a cut on the top. **Mr. Leary** stated that this would be a potential to look at. **Senator Coiner** asked would you be willing to look at that and get back to us with a report? **Mr. Leary** responded yes, the Department would be more than happy to do a pros and cons analysis of that. My concern up front would be that we would be reducing some

services for those individuals that absolutely needed them.

Chairman Lodge asked **Mr. Leary** what is the average number of hours provided? **Mr. Leary** responded via **Mr. Simnitt**, the average number of hours across all participants in developmental disabilities agencies is 11 hours per week. However, obviously, there is a lot of variability.

Chairman Lodge asked if that would be adults and children together or would that be just children? **Mr. Simnitt** responded it reflected combining the two.

Senator Hammond asked **Mr. Leary** to respond to the soft cap for adults issue? **Mr. Leary** responded the current State Plan would not allow for soft caps since that is how it is in the State Plan. However, it is always something that we could go back and talk about prior authorization of a service over and above. Our developmentally disability services for adults is already prior authorized so that might be a tough one to do.

Senator Lodge asked if **Mr. Leary** could give a quick briefing on the difference between the services that are offered in Idaho and the services that are offered in the surrounding states? **Mr. Leary** responded that testimony had been offered earlier about the State of Washington. **Mr. Simnitt** replied that if you look at developmental disabilities services in the State of Idaho especially under our Medicaid State Plan, Idaho typically has more services available than most states.

Senator Darrington stated a comment was made that we don't walk in your shoes after all. That is false. There are Senators here that walk in your shoes. I want to make that crystal clear. Every Senator here believes that there is a need for these services. Every Senator here believes that there are good services provided by our providers and that they are necessary, proper and worthwhile and helpful to those that are not in a position to help themselves. There are one or more Senators in this room who shall remain unnamed who have close family members who require as many services as anyone who testified today. I can think of one in particular that I am aware of and the person wouldn't appreciate it being revealed. This individual will not learn to speak, probably not ever hear, limited motor skills, will never graduate from high school, will never enjoy independent living, now that comes from somebody that is in this room. So, we share your pain personally. In every way. On the other hand, we are faced with a huge dilemma. I look through the suggestions to the Department how to cope with this dilemma, one of which says take away all the State employee's benefits in the department of Health and Welfare. **Mr. Leary** indicated that perhaps there could be a little savings in some of the proposed suggestions, which no doubt will be further evaluated before we see these rules next year. No one is willing to stand up there and say don't cut me, and don't cut thee, go after the person behind the tree because you can't see them. That's what they used to say about taxes. No one is willing to say that because, I will tell you there are a great many programs out there in this Department and State government where people feel just as passionate as you and I do about this issue. So, we are all faced with a real dilemma, which we cannot as a Legislature fail to address or as a committee fail to address. We have an

absolute solemn responsibility to balance the State budget and there will be sacrifice on the part of everyone in this State who enjoys any State services from any State department of government, including some Senators within this room. We do not have an alternative except expressed by **Mr. Leary**.

MOTION

Senator Darrington moved to approve Docket 16-0310-0902. The motion was seconded by **Senator McGee**.

SUBSTITUTE MOTION

Senator Bock moved to make a substitute motion to reject the rule.

Vice Chair Broadsword asked if there was a second. Hearing none, the committee will continue to discuss the first **motion**.

Vice Chair Broadsword stated that at least three members of the Committee sit on the Joint Finance committee and there is a huge task before them. Every time we find an area where we have to cut it hurts someone. It is a job we have to do. **Vice Chair Broadsword** said she will support this motion.

Senator Bock stated that obviously there is a need and everyone acknowledges that. There is obviously a budgetary problem everyone acknowledges that. The question is where in this process do we make the decision as to what cuts should be made. Of course, that is the matter of establishing priorities. I really want to commend the Department of Health and Welfare for their work in connection with the help with one of my constituents that testified today get through the process of EPSDT program. That said, some decisions that are made out of the Executive Branch are affecting what we do here. I would just simply say this is not the right program to cut and we need to really look at, not necessarily within the Health and Welfare budget, but within other programs that are a part of State Budgets that really are probably better programs to cut because they don't affect the most vulnerable people that we have in our population.

Vice Chair Broadsword asked, **Senator McGee**, if he wanted to touch on transportation versus services? At least a clarification of where the dollars come from. **Senator McGee** responded he would like to talk to **Senator Bock** about transportation dollars versus general fund dollars, but they could have that discussion at another time. There was a point made today regarding transportation dollars over people. There has been a great deal of discussion about that. It is a disingenuous argument because those are two different pots of money and everyone at this table knows it. Anyone that understands the State budget knows that we get money for roads through gas tax and registration fees, it has absolutely nothing to do with the budget that we are talking about today. I will echo the comments of the parliamentarian of the Senate, Senator Darrington. I know who he is talking about, and I also know every single one of you at this table and I know a lot about your families and I know a lot about the

votes you have made here. This is my fifth year on this committee. We deal with some pretty serious issues not the least of which is this issue. I have received many of your emails, many of your letters and phone calls and I can tell you there is not a single person at this table who doesn't understand the consequences of these actions and the degree which you and your children are reliant on these services. I just had a child myself and that puts all of this in perspective for me. These are not easy decisions for us to make, and your testimony has been valuable.

Senator Hammond stated that he had to respond to the remark that this is not the place to make the cuts. When you sit on JFAC, you recognize that better than anyone. Should we cut education which represents a little more than half of our State budget? Education will be impacted substantially in the next couple of years. Is it Corrections? Should we throw more prisoners out in the street? Should we crowd them closer? Is that a solution? Probably not. We have already done things like put prisoners in a warehouse which is a very cheap way to house them. When you start taking out Health and Welfare, Education and Corrections, the amount of money left to cut the amount that we need is nothing. There is not money left. There really aren't any alternatives when you start examining each one of those alternatives, as a platitude, it sounds great but as a reality it just isn't there.

MOTION

Vice Chair Broadsword asked if there were further comments? As there were none, a motion before the committee is to accept the rule.

Senator Bock asked for a roll call vote. **Vice Chair Broadsword** asked the secretary to call the roll. **Senators Lodge, Broadsword, Darrington, McGee Coiner, Hammond, Smyser** voted aye. **Senator Bock** voted nay. The motion carried

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachments 3, 3A,3C,3E,3F,3H, 3I,3N).

16-0602-0801

Relating to Rules Governing Standards for Child Care Licensing (Pending)

Mr. Cameron Gilliland, Bureau Chief, Division of Family and Community Services, Department of Health and Welfare stated the changes in the Child Care Licensing Rules listed in Docket 16-0602-0801 will make Child Residential Care Facilities and Therapeutic Outdoor Education Programs more effective, clarify what is expected of providers, and assure the safety of children. These changes only impact Child Residential Care Facilities and therapeutic outdoor programs. There is no impact on Foster Care Homes or day care regulations. Child Residential Care Facilities generally serve troubled children who are not so troubled that they are incarcerated or hospitalized. In many cases the Residential Treatment

Facilities represent a step-down from detention or hospitals. Children accessing these services come from three sources: 1) Foster Children from Department of Health and Welfare through Child Welfare or Children's Mental Health Programs; 2) Department of Juvenile corrections; 3) private families who pay for the services themselves. The rule changes we are proposing are not urgent but they are important. Most of the changes are preventative in nature. We expect increasing issues if we do not change these rules but we are not introducing the rules to solve an immediate problem. A major reason for this rule promulgation is to regulate the practice of mixing children and adult clients. Eventually all children turn 18 and become adults. A process must be in place to transition children from our programs to adulthood. Usually this transition is smooth and young adults transition out of the Residential Care Facility. For some children it is indicated that they receive treatment or education for a time after they turn 18. State statute allows for "continued care" for clients completing treatment or education but only for clients under the oversight of DHW or DJC. This distinction was somewhat ambiguous under our old rules and we have seen some private pay only agencies place adults with children with poor results. The new rules allow for transition in private-pay-only agencies where 18 year old adults may continue to be served for 90 days or until they finish the current school year. Another change we made to the rules has to do with the practice of religion at the agencies. Our former rule required that any agency accepting children have a policy that included reasonable efforts to accommodate the religion of any child entering care. This requirement sounds appropriate except a number of our private-pay-only agencies have a religious mission and may be affiliated with a particular faith. This policy ran against the fundamental purpose of these organizations. At the same time we have an obligation to stay in compliance with our federal mandate to assure religious and cultural accommodation for children in state custody. So we changed this rule to indicate that agencies that contract with the State must accommodate the religion of children coming into care while private-pay-only agencies must provide full-disclosure to parents regarding their religious affiliations before accepting a child.

A preventative change to the rules was created to accommodate the ability for the Department to be graded in response to rule violations. Our old licensing rules lack effective sanctions to require compliance to rule. Changes to the rules allow us to ban new admissions at an agency in addition to more severe measures such as revoking or suspending a license. If a facility was delivering sub-standard service but was not endangering children it is in the best interest of the children and the department to compel the agency to correct practice without disrupting the placement. Another weakness in our licensing survey process deals with revoking agency licenses. Typically licensure revocations is a long process where we work with the facility to bring practices in line with rule standards. Our efforts to assist have been effective. Facilities that have been found to not meet the rules either have adopted better processes or left the business.

We have not revoked any license in the last two years. We have had several who voluntarily surrendered their license as it became clear that

we would hold them accountable to rule. We found that when we finally enter the revocation stage the agencies who lost their license would immediately reapply for licensure. Our rule set mandated that we license them if they met application requirements. Under our new rules if we revoke a license the agency cannot reapply for five years. Additionally, the old rules quoted outdated and specific building and fire code regulation.

The new rules cite the Universal Building and Fire codes, and require building inspectors and Fire Marshals to decide on compliance. The new rules forbid strip searches and "alternative" forms of restraints such as pepper spray, tear gas and medically administered sedatives. Residential Care Facilities and Therapeutic Outdoor Programs are not Juvenile Corrections Facilities and shouldn't include intrusive and humiliating searches for contraband when other methods are available. Almost none of our agencies use these methods of search or restraints and we want to close the door on them completely.

In promulgating these rules we met with providers both formally and informally regarding their questions and issues. The Department also held a public hearing, requested comment and incorporated such comment into the final version of the rule.

Vice Chair Broadsword asked does this impact the General Fund? Mr. Gilliland responded no. Donna Lee Melvik testified in support of the rule changes proposed.

Chairman Lodge commented on the great success story that is Donna Lee Melvik, thanked her for the years of commitment and remarked that Donna Lee is a great inspiration to many people. Shelly Hansen also testified in support of these rule changes.

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 approve Docket 16-0602-0801. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

ADJOURNMENT

Vice Chair Broadsword adjourned the meeting at 4:59 P.M..

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 22, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed participants. **Chairman Lodge** then turned the meeting over to **Vice Chair Broadsword** to begin the presentation of rules.

RULES

16-0314-0801 Relating to Rules and Minimum Standards for Hospitals in Idaho

Debra Ransom, Bureau Chief, Facility Standards Bureau, Department of Health and Welfare, Medicaid Division stated she has management oversight responsibility for the survey, licensing and certification programs the Department operates to support both federal guidelines and Idaho statute and rule. Ms. Ransom stated a new section of rule being added to the current IDAPA code in 16-03-14 "rules and minimum standards for hospitals in Idaho". These new rules are designed to protect the health and safety of Idaho citizens.

One of the newer hospital services we have seen nation wide, is the emergence of free standing emergency departments. Emergency rooms that are not co-located within the Hospital campus. Free standing emergency departments provide a full array of emergency room services but do not have the same level of specialists and services as a hospital campus based emergency room. Patients present with an acute condition are treated and released or are treated, stabilized and transported to a nearby hospital where they can receive the appropriate services to address their medical needs. Idaho has one free standing emergency department in Eagle through St Alphonsus and others are being planned. While our hospital rules address emergency rooms on a hospital campus; they do not currently address free standing emergency departments. These pending rules will help remedy this. These rules outline minimum design and construction standards; online standards of care and services

for these entities, and provide guidelines to ensure these facilities will be regulated to protect the health, safety and welfare of the public. These rules were negotiated with the industry to include the Idaho Hospital Association; St Alphonsus; St Lukes; Mercy Medical Center and Emergency medical services staff in the Department. There has been no public comments, the Board of Health and Welfare unanimously approved these pending rules in May 2008.

Senator Hammond asked if these free standing emergency medical services differentiate from the minor emergency clinics. Ms. Ransom responded they do. The rules identified that in order to have a standing emergency department they must be owned by a Hospital. The services are such that they are staffed 24 hours a day seven days a week, they must have board eligible or certified physicians positions and registered nurses that are certified in advanced life support and pediatric life support. **Senator Hammond** then asked if this truly is a fully staffed and emergency capable facility which differs from a minor emergency clinic that we have because the doctors are trying for emergency services is that correct. Ms. Ransom replied yes.

Senator Bock asked why the existing regulations or rules as they apply to hospitals don't work for the free standing units. **Ms. Ransom** replied part of it is our current minimum hospital rules were developed in 1988 and services that were seen as emergencies have changed and the development of this new product came about in the early to mid 90's. Also, there is not a construction standard for free standing emergency departments. In this case it is in a medical office building. We also wanted to make sure that we differentiated so it would not be like the minor emergency clinics but rather a hospital level service. When people see the hospital sign in the emergency room they know that there is a minimum standard for expectation for going to this facility. This rule really goes to the construction.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Senator Hammond moved to approve Docket 16-0314-0801. The motion was seconded by **Senator Bock**. The motion carried by a **voice vote**.

16-0309-0707

Relating to Medicaid Basic Plan Benefits

Paul Leary, Deputy Administrator - Medicaid, Department of Health & Welfare stated that consistent with the legislative direction given in House Concurrent Resolution 51 passed by the 2006 Legislature dental benefits on the Medicaid basic plan are now provided through a selective or

managed contract. The previous rules relating to dental services are being deleted and the rules now state that these benefits are provided through a third party. This docket was extended as a temporary and proposed rule by the 2008 Legislature and now is before you for final approval. In summary, consistent with HCR 51 these rules designate that the dental benefit for Medicaid participants on the Basic Benefit Plan are provided by a selective or managed contract.

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 Docket 16-0309-0707. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0309-0804

Paul Leary, Deputy Administrator - Medicaid, Department of Health & Welfare, stated that Chapter 9 of the Medical Assistance rules is being amended to comply with federal regulation changes that require all handwritten Medicaid prescriptions for fee for service participants to be fully compliant with federal and/or state guidance for prescription tamper - resistance. The change in federal requirement was included in section 7002(b) of the U.S. Troop Readiness, Veteran's Care, Katrina Recovery, and Iraq Accountability Appropriation Act of 2007. A phased-in implementation approach and three baseline characteristics of tamper-resistant prescription pads were originally outlined by the Centers for Medicare & Medicaid Services (CMS) in August 2007. To be considered "tamper-resistant," such prescription pads must contain at least one of the three characteristics by April 1, 2008 and all three characteristics by October 1, 2008. These baseline characteristics are: (1) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form; (2) One or more industry recognized features designed to prevent the erasure or modification of information written on the prescription pad by the prescriber; (3) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms. In summary, the department is requesting that the committee approve docket 16-0309-0804 as presented. The changes in these rules are to comply with changes in federal regulations that require tamper-proof handwritten prescriptions for fee for service Medicaid participants.

Chairman Lodge commented that it was her understanding that there was a rule in place that covered this, did it not cover Medicaid

Senator Darrington answered that this rule was done for the Board of Pharmacy. **Mr. Leary** responded that **Senator Darrington** was correct. The rule required tamper-proof prescription pads for scheduled drugs which are narcotics and those types of drugs. However, this federal law states that for any fee for service Medicaid prescription must be on a tamper resistant pad and did not cover electronic prescriptions. **Mr. Leary**

believes the intent was to protect the medicaid prescription, but more so to force people toward the electronic prescriptions.

Vice Chair Broadsword asked if the Department worked with the Board of Pharmacy to encourage them toward that end. **Mr. Leary** replied yes. Our first move was to ask the Board of Pharmacy if they would amend their rules for all prescriptions in the State. However, since this was a requirement for only medicaid they were a little resistant to do so.

Senator Bock stated that more and more prescriptions are being prescribed electronically. He asked, do you have any idea what that percentage is? **Mr. Leary** answered that he really did not because it really depends on the year. **Mr. Leary** stated that he had heard the other day that some of the electronic hook ups were getting to the point of 60% electronic orders which is a lot higher than he would have anticipated.

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 Docket 16-0309-0804. The motion was seconded by **Senator LeFavour**. The motion carried by **voice vote**.

16-0310-0705

Relating to Medicaid Basic Plan Benefits

Paul Leary, Deputy Administrator - Medicaid, Department of Health & Welfare, stated the Department is asking for approval of the pending rule in docket number 16-0310-0705. This docket can be found behind Tab 16 in your Health and Welfare Rule Booklet. The text is behind Tab 16-0310-0705. This is a companion docket to docket 16-0309-0707. Consistent with the legislative direction given in House Concurrent Resolution 51 passed by the 2006 legislature dental benefits on the Medicaid basic plan are now provided through a selective or managed contract. Participants who are on the Enhanced Benefit Plan received their dental benefit through Medicaid. The entire rule relating to Medicaid dental benefit coverage has been deleted from chapter 9, Medicaid Basic Plan, and moved in their entirety to chapter 10, Medicaid Enhanced Plan. The effective date for this rule change is September 1, 2007 which coincides with the date that these benefits were outsourced for the Medicaid Basic Plan. In summary, the rules covering dental benefits provided through Medicaid have been moved from chapter 9 of the medical assistance rules to chapter 10 that covers the Medicaid Enhanced Plan.

Vice Chair Broadsword asked, how is the program with contractor provider been working and is there any talk of moving the enhanced plan

underneath that contractor or different contractor? **Mr. Leary** responded yes, what they have seen with the out source program is an increase of approximately 120 providers across the State. We have also increased the rates through the contract although we went zero budget from the State standpoint. They have focused and been able to put a benefits package together that covers the same breadth of services but have actually put some limitations on some services that meet the dental standards. We have been able to do children preventive dental services 7% increase over what the medicaid rate was and then track changes as we go along and a 3% increase in the adult rate for preventive services. The reason we did not out source to the whole population is we really wanted to protect our special needs population just in case this didn't work. We are currently looking at how we can extend this contract to the enhanced plan.

Chairman Lodge commented she was told there was an overused pediatric hospitalization form for children using dental services. Do you have any figures on that? **Mr. Leary** responded he was pulling those figures together and indicated that he had spoken with the same dentist and should have the numbers by next week. **Mr. Leary** indicated that he had the same concerns that some dentists use the hospital environment for some of the dental services they provide which is quite appropriate for our special needs population. It is understandable that for some of those individuals, they are tough to put into dental chairs. However, if it becomes routine it becomes an issue.

Senator Hammond stated that he had received a three page letter from a dentist expressing concern regarding access to pediatric dentistry as well as access to surgical facilities, should this letter be directed to you? **Mr. Leary** responded that he had the same letter and a response had been crafted. The issue this dentist is having is acquiring certification in a facility. This is obtained through our facility standards. **Mr. Leary** indicated that he has referred this letter back to the facilities standards division. This is an issue we want to investigate. **Senator Hammond** remarked that his understanding of the issue stated in the letter was the unwillingness of more and more dentists to accept medicaid patients specifically pediatric medicaid patients. **Mr. Leary** stated it was specific facilities and also it was some relationships to surgical centers that might come into play. **Senator Hammond** indicated he would send a copy of the letter he received to **Mr. Leary** to make certain they were talking about the same issue.

Vice Chair Broadsword requested that **Mr. Leary** send a copy of his response to all committee members.

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 approve Docket 16-0310-0705. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

16-0601-0801

Relating to Rules Governing Family and Children's Services

Shirley Alexander, Child Welfare Program Manager, Central Office, Department of Health & Welfare, Division of Family and Community Services, stated the most substantive changes in these proposed rules are changes that were made to sections 560 through 566. These changes deal with dispositioning reports of child abuse, neglect and abandonment as well as the Child Protection Central Registry. Although during the 2008 legislative session rules were passed that revamped the Child Protection Central Registry process, the DHW Senate Committee expressed some concerns and asked that we address those concerns with revisions during this session. In good faith, we have addressed those concerns in the rule changes in this docket. Ms. Alexander then summarized some of the concerns and subsequent revisions as follows:

- In section 560 (page 39 of the rules), the Senate Subcommittee asked that we continue to make the Central Registry portion of our rules as evidentiary as possible, avoiding words that could appear subjective. Therefore, in section 560.01.e, we amended the criteria for a substantiated report by striking the term, "That would lead a reasonable person to conclude." In making sections 560 through 563 more evidentiary, phrases such as "potentially dangerous" at the bottom of page 41 were stricken.
- In the existing rules, there are four (4) levels of risk on the Child Protection Central Registry. A description of these levels begins in Section 563 (pages 40 through 43). These levels of risk are determined by the severity and type of abuse. It is proposed that we omit the fourth (4th) level because level 4 poses such a low risk of harm to children that after consideration, individuals with a level four (4) designation should not even be substantiated as abusing or neglecting a child. Some examples of the mild risks that are currently given a level four designation include physical neglect due to poverty issues, including no heat or utilities, minor injury of a child while the parent is attempting to protect him/herself or another person, and an unsanitary house with timely clean up.
- These pending rules also include the addition of section 564 that clearly details the notification process when an individual has

his/her name placed on the Child Protection Central Registry as well as the administrative review and contested case appeal process. One of the biggest changes in the notification process is notifying an individual by certified mail, return receipt requested rather than by regular mail.

- In section 564 we have also changed the process so an individual has twenty eight (28) days from the day on the notification letter to request that his/her name not be placed on the register. Currently a name is placed on the Child Protection Central Registry upon substantiating the report and removed upon an administrative review. This change allows a twenty eight day window of time to occur prior to an individual's name appearing on the register.
- There is a new section, 565, that describes how to petition to have a name removed from the Child Protection Central Registry if the name was placed on the registry prior to October 1, 2008. The process for removing a name has not changed from the current practice. This section was added to clarify the process and the information was placed under a separate heading so it is more accessible.

In addition to the Central Registry rule changes, the rules for Children's Mental Health Services were deleted from this chapter and moved to a new chapter and Docket that the Division of Behavioral Health will address. Finally, a few changes were made to the adoption section of these rules. Approximately ten (10) years ago, our Division began decentralizing the adoption process, empowering regional social workers to do most of the work needed to finalize adoptions. However, our rules continued to require notification to be sent to the State Adoption Program Specialist in Central Office. This process is no longer necessary or in place so we have changed the adoption rules to align with current practice. An example of this change is found in section 711.02. We have also clarified the process of re-certification and lapse of certification for individuals who want to be certified as adoption professionals. Certified Adoption Professionals (CAPS) conduct private home studies and can supervise adoptions. Our current rules do not address a lapse of their certification. Therefore, section 890, was amended to clearly explain what must be done to re-certify if a lapse of certification occurs. The remaining changes were either clerical corrections or edits made to align the rules with the Department's current business process and plain language standards.

Vice Chair Broadsword asked what kind of negotiations were done in this rulemaking? **Ms. Alexander** responded after meeting with the Senate sub-committee, the Department made the recommended changes. The Department did not do public negotiated rulemaking. We did take this to the Court Improvement project, the Governors Children at Risk Taskforce and to Citizen Review Panel.

Chairman Lodge said in the Senate sub-committee was Senator Curt Mc Kensie and who else? **Ms. Alexander** replied Senator Kelly and Howard Belodoff. **Chairman Lodge** stated that the Senate does not have sub-committees just to get the new people up to speed. Thank you Shirley and thank you for the work that you did on this.

Senator Bock stated that he assumed people could show up on the registry without being convicted of a crime and then asked what are the due process safeguards that you have to make sure that someone is not placed on the registry improperly? **Ms. Alexander** responded the rules that have been presented here, are part of that due process. Individuals have to be notified in writing prior to having their name placed on the registry. Individuals can request an administrative review, and even after the administrative review they can request a subsequent review of the contested case rule 16-05-03. The Department has multiple places where an individual can say please take another look at this. **Senator Bock** asked if an individual is successful in persuading you that he or she should not be on the registry, would that remove them from the registry so that if someone checked it, the name would not be there or is there a record? **Ms. Alexander** replied that the name would be removed from the Central Registry, however the information is kept in the data system, not on the registry but in the history report.

Vice Chair Broadword asked **Ms. Alexander** to touch on the issue of estimated annual costs impacting the general fund to cover sending substantiated letters by return receipt certified mail? **Ms. Alexander** replied that the \$5,900 was tabulated by looking at the average annual number of substantiated reports that the department has each year which is approximately \$1,100. They also add increased postage rates. These will be additional cost in the operating budget.

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 Bock moved to approve Docket 16-0601-0801 . The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0737-0801

Relating to Children's Mental Health Services

Chuck Halligan, Program Manager, Children's Mental Health Program, Department of Health & Welfare, Division of Behavioral Health, stated these rules were taken primarily from existing Department rules. The existing rules concerning children's mental health services were contained in Section 16-0601 Rules Governing Family and Children's Services. We

extracted the sections pertaining to children's mental health from those rules into these rules, edited them and added some additional sections for clarification and in response to statute changes. The Division of Family and Community services will be deleting the sections pertaining to children's mental health in their docket 16-0601-0801 at a later time. Three negotiated rule-making meetings were held related to these rules in April and May 2008 in Coeur d'Alene, Pocatello and Boise. These rules were then published in the October 1, 2008 Idaho Administrative Bulletin. Amendments were made to clarify language during the public comment period. No other public hearings were held or requested.

The children's mental health statute allows the Department to enter into voluntary agreements with parents when a child meets the department's eligibility criteria for services. Idaho Code also provides the courts with a method of ordering the department to conduct assessments and provide treatment for a youth with a serious emotional disturbance. These rules provide the description of services, eligibility criteria, application requirements, and appeals processes for the children's mental health program. On page 245, Section 400 lists the services provided by the Department. The actual descriptions of those services are provided in the definition section of the rules, Sections 010 through 013. Page 97, Section 401, provides rules for the Teens at Risk program. This is a new section of rule and is the result of a change in children's mental health statute from a prior legislative session. This section was added but is not being implemented because there is no associated funding for this program. The teens at risk program is statutorily limited by the funds available specific to the program. Starting on page 247, sections 405, 406 and 407 provide the methods for accessing services, application, assessment, and determination of eligibility for children's mental health services. Section 406 requires us to document our assessment using the standard mental health assessment. This standard mental health assessment was developed in response to Senate Concurrent Resolution 109 which required the development and adoption of a common mental health assessment. Eligibility for children's mental health services is defined in Section 407. Eligibility requires that a youth has a mental health diagnosis and a functional impairment which is measured by a standardized tool called the child and adolescent functional assessment scale. We are required to provide written notice of our eligibility decision and of the appeal process in Section 410, page 248. Parents are responsible for reimbursing the department for certain services. Sections 418, 419, and 420 on page 249 address this through the use of a sliding fee scale to determine financial responsibility. The actual sliding fee scale is a separate rule docket 16.0701 0801, which will be presented at a later time. We refer to that docket in these rules. Starting on page 250, sections 500 through 599 deals with alternate care. Alternate care is when children have to be placed outside of their own homes for treatment. These placements may include treatment foster care and residential care facilities. The section of rule provides the authority, protections, case planning, parental support, payments, and other requirements for children in alternate care. Section 600 on page 257 is specific to treatment foster care and specifies the provider requirements and qualifications for this program. Section 700 on the next page is specific to residential care and again states provider requirements and qualification. Section 800

provides for periodic reviews of children who are in alternate care for six months or more. This independent review assists the department, family and child on monitoring the progress and safety of the child while they are living outside of the family home. Mr. Halligan requested the committee consider adopting these pending rules.

Vice Chair Broadsword asked, what negotiations, if any, were done? Mr. Halligan responded three negotiated rule-making sessions were scheduled. Any time this takes place, it is published according to the Administrative Procedures Standards. Mr. Halligan personally informed the State Mental Health Planning Council, which at the time had an approximate membership of 40 individuals, of dates and times of these sessions. The Council also was provided handouts. This notification included all regions, all regional boards, members, parent representatives and the Idaho Federation of Families a parent advocacy group for children's mental health. **Vice Chair Broadsword** asked, were there attendees at any of these sessions. **Mr. Halligan** replied there were 3 people, 1 staff member, 1 parent and 1 adult consumer, who attended in Coeur d'Alene, There were no attendees at the Pocatello or Boise sessions.

Senator Bock asked, What happens to an individual that is placed in foster care, undergoing ongoing treatments, they then turn 18, become an adult, are they still eligible to be treated as foster children? **Mr. Halligan** replied, This is a tough question for the children of the mental health program. However, knowing child welfare, they do allow them to stay past their eighteenth birthday. The needs of the child need to be determined and you do function under the same foster care requirements that the child welfare program does because that's partially federally funded. The way this could be done is to enter into an agreement with the child and foster parents regarding the child responsibility such as will the child continue to live there, will school be continued and reach a time limited agreement. There is also a federal independent living funding mechanism which has certain requirements such as a child in foster care can obtain a 90 day extension. **Senator Bock** asked, does Health and Welfare have any of it's own funds that can be used for continued care? **Mr. Halligan** replied if the federal funds cannot be accessed, it would be all State General funds.

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 LeFavour moved to approve Docket 16-0737-0801 . The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0750-0901

Relating to Rules and Minimum Standards for Non-Hospital

Medically-Monitored Detoxification/Mental Health Diversion Units

Bethany Gadzinski, Substance Use Disorder Bureau Chief, Department of Health & Welfare, Division of Behavioral Health stated this chapter was written as a need has been identified for medically monitored detoxification/mental health facilities in the State. One is currently being constructed in Boise on Allumbaugh across from Intermountain Hospital. Currently there are no facility standards in Administrative Code for approving this new type of facility. This rule defines the minimum design and construction requirements for such a new facility. New rules are needed to ensure that this type of facility is regulated in order to protect the health, safety and welfare of the public. These rules and minimum standards apply to every Detox/Mental Health Diversion Unit in Idaho, that provides: evaluation; observation; monitoring; care and treatment; twenty-four hours per day, seven days a week, to persons who are suffering from a sub-acute psychiatric or drug/alcohol crisis. These services are offered in a residential setting under the supervision of a physician. A detox/mental health diversion unit is designed to withdraw an individual from alcohol or other drugs and to prepare him to enter a more extensive treatment and rehabilitation program and/or ameliorate a mental health crisis. These facilities are not intended to serve as a secure holding facility for the detention of any individual. This rule before you is for facility standards only. Program related rules, such as staff ratio and staff qualifications will be brought to you during next year's legislative session. This new rule will allow for the beginning of the construction of a detox/mental health facility in Boise. These rules were requested by the partners working together to build the Boise facility. This rule was developed in coordination with several local stakeholder groups to include: City of Boise Planning and Development, City of Meridian, City of Eagle, United Way, Ada County, Health and Welfare, Mountain West Addiction Technology Transfer Center (MWATTC). This new rule includes:

- Requirements for building construction and physical standards
- Site location and requirements
- Number and location of beds and sleeping areas for clients served at the facility
- Sobering Station regulations
- Client toilet and bathing facilities
- Administrative areas
- Additional room and area requirements
- Linen and laundry facility and services
- Details and finishes for the walls and floor surfaces
- Water
- Lighting
- Ventilation
- Utility Requirements and
- Accessibility for persons with mobility and sensory impairments

Senator Darrington asked, How does this rule fit in with the current building standards? **Ms. Gadzinski** replied the Deputy Attorney General Rob Luce did work with facility standards to help put these together.

There really is not in the country a facility such as this that we are building in Boise. Consequently we had to grab from other areas and Facility Standards were consulted on specifications. **Senator Darrington** asked, Will the Bureau of Building Standards be conducting the site inspection? **Ms. Gadzinski** answered that she did not have the answer.

Vice Chairman Broadword asked if there was any possibility for an existing building to be modified as opposed to building from the ground up, to meet this standard. **Ms. Gadzinski** replied yes, this certainly is possible. They had anticipated that if another community wanted to do this there may already be an existing building available for modification.

Senator McGee commented in his spare time he sits on the United Way Treasure Valley Board and wanted to compliment Bethany and her team for working so closely with United Way. There are a lot of organizations involved in this endeavor. It is very complicated and complex agreement and the State has done a tremendous job to see that this gets done.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 7).

MOTION

Senator McGee moved to approve Docket 16-0750-0901. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0503-0801

Relating to Rules Governing Contested Case Proceedings and Declaratory Rulings

Jeanne Goodenough, Chief of the Human Services Division of the Attorney General's Office, representing the Department of Health and Welfare. This year we made a few changes to the Contested Case Rules of the Department which define our internal appeal processes. The changes of significance include Rule 108, on page 398 of your books. This change moved a rule that applied to the Division of Welfare from the back to the front of the rules, so that the requirement to consolidate a hearing applies to all programs. This change is useful in this era of cutbacks, where multiple people may be appealing the same action. This saves the expense of having many hearings over the same issue. In Rule 151, which starts on page 398, we clarified the process for appeals before the Board of Health and Welfare, conforming the time to appeal to that in the Administrative Procedure Act, requiring the person filing the appeal to identify the issues for the Board, and providing a process for deciding whether a transcript of the administrative hearing is necessary. This will avoid having the appellant pay for a transcript if one is not necessary. In Rule 300, on page 401, we added a requirement that an administrative review be held within 28 days after it is requested. We had a situation where a Medicaid provider stalled the review process for nearly two years.

Rule 500, page 402, is a companion to a docket that Shirley Alexander presents, under Tab 24. This relates to Child Protection investigations. If an allegation of abuse or neglect is found to be substantiated, the subject of the investigation will be given notice and 28 days to request an administrative review. The person's name will not go on the Child Protection Registry during that 28 day period, and the individual may provide additional information in that administrative review. Rule 501, also on page 402, creates an administrative review process for issues that relate to Intensive Behavioral Intervention services. Administrative reviews occur prior to a hearing, and attempt to resolve matters without the stress and expense of a hearing. Rule 502, page 402, creates appeal processes for the Infant/Toddler Program, which deals with developmental delays in very young children. These processes are required by federal regulation, and had been described in information provided to parents, but had been omitted from the rules. There are some odd things about these requirements, such as Rules 502.02 and .03, which provide for mediation to occur at the same time a hearing must be held. Rule 503 also allows for complaints to be filed from people outside the state, which is required by the regulations. The Department has never had an appeal in this area but we have the rules in place. We have always been able to resolve matters short of all these process but they are all required.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 8).

MOTION

Senator Hammond moved to approve Docket 16-0503-0801. The motion was seconded by **Senator Coiner**. 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

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 26, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: Chairman Lodge

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.

MINUTES: **Vice Chair Broadsword** called the meeting to order and welcomed participants. **Vice Chair Broadsword** referred to the letter distributed to committee members January 16, 2009 requesting early review of the first 19 rules listed on this agenda. As stated in the letter, these rules have no controversy, no known opposition and hearings were unattended by stakeholders. It would save the Department of Health and Welfare and the Committee time if these rules were considered in a lump sum vote without presentation.

RULES

16-0202-0801 Relating to Rules of the Idaho Emergency Medical Services (EMS) Physician Commission (Pending)

16-0208-0801 Relating to Vital Statistics Rules (Pending)

16-0224-0801 Relating to Clandestine Drug Laboratory Clean-up (Pending)

16-0301-0801 Relating to Eligibility for Health Care Assistance for Families and Children (Pending)

16-0301-0802 Relating to Eligibility for Health Care Assistance for Families and Children (Pending)

16-0304-0801 Relating to Idaho Food Stamp Program (Pending)

16-0304-0802 Relating to Idaho Food Stamp Program (Pending)

16-0304-0803 Relating to Idaho Food Stamp Program (Pending)

16-0305-0801 Relating to Eligibility for Aid to the Aged, Blind, and Disabled (AABD) Pending

16-0305-0802 Relating to Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

(Pending)

- 16-0306-0801** Relating to Refugee Medical Assistance (Pending)
- 16-0308-0801** Relating to Temporary Assistance for Families in Idaho (TAFI) (Pending)
- 16-0308-0802** Relating to Temporary Assistance for Families in Idaho (TAFI) (Pending)
- 16-0308-0803** Relating to Temporary Assistance for Families in Idaho (TAFI) (Pending)
- 16-0416-0802** Relating to The Weatherization Assistance Program in Idaho (Rewrite) (Pending)
- 16-0416-0801** Relating to the Department of Energy Administration Weatherization Program (Repeal) (Pending)
- 16-0612-0801** Relating to Idaho Child Care Program (Pending)
- 16-0612-0802** Relating to Idaho Child Care Program (Pending/Fee)
- 16-0612-0803** Relating to Idaho Child Care Program (Pending)

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (attachment 1)

MOTION

Senator LeFavour moved to approve Dockets 16-0202-0801, 16-0208-0801, 16-0224-0801, 16-0301-0801, 16-0301-0802, 16-0304-0801, 16-0304-0802, 16-0304-0803, 16-0305-0801, 16-0305-0802, 16-0306-0801, 16-0308-0801, 16-0308-0802, 16-0308-0803, 16-0416-0802, 16-0416-0801, 16-0612-0801, 16-0612-0802, 16-0612-0803. The motion was seconded by **Senator Bock**. The motion carried by a **voice vote**.

MOTION

Vice Chair Broadsword asked for a motion to approve the January 20, 2009 minutes. **Senator Bock** moved to approve the minutes for January 20, 2009. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

MOTION

Vice Chair Broadsword asked for a motion to approve the January 19, 2009 minutes. **Senator Bock** moved to approve the minutes for January 19, 2009. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0739-0801

Relating to Appointment of Designated Examiners and Dispositioners (New Chapter) (Temporary)

Scott Tiffany, Bureau Chief, Mental Health, Division of Behavioral Health, Department of Health and Welfare, said this is a temporary rule that establishes minimum qualifications and appointment process for

Designated Examiners. The main purpose of this chapter is to define the minimum qualifications for individuals who wish to be Designated Examiners. Idaho Code Section 66-317 states ““Designated examiner” means a psychiatrist, psychologist, psychiatric nurse, or social worker and such other mental health professionals as may be designated in accordance with rules promulgated pursuant to the provisions of chapter 52, title 67 Idaho Code, by the Department of Health and Welfare. Any person designated by the department director will be qualified by training and experience in the diagnosis and treatment of mental or mentally related illnesses or conditions.”. This chapter of rules represents the Department’s response to the direction provided by Idaho Code. This chapter of rules clearly defines the specific training and experience necessary to become a Designated Examiner. Specifically, this chapter requires a professional license be maintained for the duration of the appointment as one of the following as a pre-requisite to becoming a Designated Examiner; 1) Licensed Physician; 2) Board-certified Psychiatrist; 3) Licensed Psychologist; 4) Licensed Clinical Nurse Specialist; 5) Licensed Nurse Practitioner; 6) Licensed Clinical Professional Counselor; 7) Licensed Professional Counselor and 8) Licensed Masters Social Worker (with a supervision plan approved by the licensing board), or a Licensed Marriage and Family Therapist. Additional required experience includes at least two years of post-master’s degree experience in a clinical mental health setting and knowledge of and experience applying Idaho mental health law. A minimum of six hours of training from a Department-approved trainer and 4 hours of observation of a Designated Examiner are also required for appointment.

Qualifications of Designated Dispositioners are defined in this chapter. Criteria for the application process and required documents are outlined. In order to be appointed, an applicant must secure a recommendation from the Regional Behavioral Health Program Manager or a State Hospital Administrative Director. The Department is required to notify applicants in writing with a final decision on the appointment within sixty days of the date of receipt of the application. Time limits of appointments are outlined with initial appointments expiring one year from the date of appointment and reappointments expiring two years from the date of the appointment.

Reappointment procedures are defined. Grounds for revocation, denial, or suspension are defined. Historically, guidance for navigating the application process and the requisite training and experience for Designated Examiners has been provided through policy rather than through Rule. The rules before you today follow the existing policy closely, with one notable exception. The requirement to obtain and maintain a professional license is this exception. Current policy allows for a holder of an earned Master’s degree in psychology, counseling, or other closely-related field; without a professional license, to become a Designated Examiner. It is important to note the current policy was drafted and implemented prior to the creation of the Division of Behavioral Health.

The Division of Behavioral Health takes its role as the mental health

authority seriously. The Division intends to set high but attainable standards in order to fulfill one of our critical obligations – the obligation to ensure high quality behavioral health services are provided to the citizens of Idaho. A critical component of a designated examination is a determination whether or not a mental illness exists. Accountability to a licensing board will help to ensure the individuals responsible for making this determination have not only met the minimum established competencies; it will also ensure continued accountability and oversight for those who are charged with caring for some of Idaho's most vulnerable citizens.

A Designated examination also includes the possibility of a recommendation of commitment to the Department. This process typically involves suspension of certain freedoms in order to help ensure the safety of a client or others. Again, the Department's intention through the creation of this rule package is to ensure the highest level of accountability to protect the health and safety of clients and others. The Department realizes this change will exclude some individuals from becoming Designated Examiners. We further realize this change will prevent some current designated examiners from reapplying. Current Division employees, some of whom may be here today, may no longer qualify to be a designated examiner. We want to express our gratitude to these employees for the services they have provided and will continue to provide. These individuals will continue to have the opportunity to make valuable contributions to the Department; however, their roles may need to change.

It is also important to point out these rules include a special provision for current Designated Examiners – current Designated Examiners will have until January 1, 2011 to meet these new requirements. This provides an opportunity for some to take additional coursework or resolve other possible deficiencies that may be preventing them from qualifying for one of the required professional licenses. The Department is pleased to point out that negotiated rule-making was held. Input was solicited from licensing boards. Negotiated rulemaking notices were published and meetings were held in Coeur d' Alene, Pocatello, and Boise. An opportunity for hearings still exists.

On behalf of the Division of Behavioral Health, We want to reiterate our commitment to setting high but attainable standards. We also want to emphasize the importance of ongoing accountability for individuals charged with protecting vulnerable Idahoans. We respectfully request the board consider extending these temporary rules. (Attachment 2).

Senator Bock asked, what is the actual process that relates to this rule? **Mr. Tiffany** replied the Designated Examination process arises typically from a mental home which is done by a physician or a police officer typically in a hospital. It is the result of a client who may or may not have a mental illness, this is still to be determined, indicating that they may harm themselves or others. Once that happens the person can be held against their will according to statute during the Designated Examination process. Senator Bock asked, what qualifications will now be required to

be Designated Examiner to go through this process? **Mr. Tiffany** replied the major change between current policy and this rule is that each Designated Examiner will be required to maintain a professional license that allows him or her to diagnose the client. **Senator Bock** asked, what kind of findings does the designated examiner have to make in order to make a determination? **Mr. Tiffany** responded that statute requires two findings, number one a substantiated mental illness and number two the likelihood of harm to self or others.

Senator Darrington stated you are throwing a new one at me but I am finding that it is well known in the code and that is the term Designated Dispositioner. **Senator Darrington** stated that he is familiar with the term examiners but it seems to him your definitions are just exactly what is said in the code. It appears that a Designated Dispositioner is, an examiner that works for the state. **Mr. Tiffany** responded that is essentially correct with the distinction that they have the authority to make a recommendation where the care for the client will commence. **Senator Darrington** stated that an examiner would do the same thing out there in private practice. Is it just an art form of wording? **Mr. Tiffany** replied Senator Darrington was correct. **Senator Darrington** asked **Scott Tiffany**, if there was any discussion within the Department of the value of the future of looking for a certification or registration designation for your examiners and dispositioners?. **Mr. Tiffany** answered this represents our concept of that certification process. Currently it's an appointment process once we review qualifications and sign an official letter that states you are hereby appointed to be a Designated Examiner. We do not license them but we give them the authority to do the examination.

Senator Bock asked, during the commitment hearing what role does the Designated Examiner Dispositioners play in determining whether or not this individual be placed in a more lengthy commitment? **Mr. Tiffany** responded it does mean the examiners make the recommendation to the court. It takes two Designated Examinations to proceed to the commitment hearing, the second must be a licensed psychiatrist or physician, they make the recommendation whether the client is committed. The dispositioner would then make a recommendation as to location or treatment.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (attachments 2 & 3).

MOTION

Senator Darrington moved to approve Docket 16-0739-0801. The motion was seconded by **Senator Bock**. The motion carried by a **voice vote**.

16-0226-0801

Relating to Idaho Children's Special Health Program (CSHP)

(Pending/Fee)

Two major changes are being proposed for the CSHP Rules this year:

1. The provision of medical foods in addition to formula.
2. Pre-payment of the client share of the formula or medical food costs.

A third change of a sliding fee scale for Adult Phenylketonuria (PKU) clients was dropped. The first major change is to make medical foods available to PKU clients. Per calorie, medical foods can be substantially less expensive than PKU formula. While formula remains necessary to provide PKU clients with phenylalanine-free protein, medical foods can provide lower-cost non-protein calories to round out the PKU diet. The inclusion of medical foods in the program will lower program costs, and is preferred by most of our PKU clients. In October CSHP held public comment sessions in Boise, Idaho Falls, and Post Falls. Only positive comments were received during this time period, and all were in support of the addition of medical foods.

The first major change is to make medical foods available to PKU clients. Per calorie, medical foods can be substantially less expensive than PKU formula. While formula remains necessary to provide PKU clients with phenylalanine-free protein, medical foods can provide lower-cost non-protein calories to round out the PKU diet. The inclusion of medical foods in the program will lower program costs, and is preferred by most of our PKU clients.

The second major proposed change is the move to a pre-payment system for co-payment collection from PKU clients. The Rule currently states that: "Persons over eighteen (18) years of age with PKU may purchase formula from CSHP at CSHP's cost." (IDAPA 16.02.26) Currently CSHP bills for the clients' co-pays after the PKU formula has been delivered. The problem with this approach is that the program has historically been unsuccessful in collecting client's co-pays. We are proposing that pre-payment be required for PKU formula and foods. If the program moves to a pre-payment system, no general fund appropriation will be necessary to support formula or food costs for adults. This does not change the intent of the Rule, only how payment is collected. Adopting this change will save the state not only the \$106,200 in general funds next year, but will also eliminate the need to request budget increases each year.

This year the Adult PKU program, which serves 26 adults, has a projected shortfall of \$32,675. Because of this shortfall, we will only be able to cover costs through approximately April of this year. In addition to the two major changes just described, CSHP has also proposed several minor changes to the Rules to reflect current program practice and to bring the Rules in line with the latest format guidance from the Idaho Department of Administration.

A third major change to the Rules was proposed placing adult PKU clients

on the same sliding fee scale used by the pediatric clients. However, after the state budget holdbacks were announced, the addition of this sliding scale for adult fees was removed from the proposed Rule change. In December a letter detailing the revised proposed Rule removing the sliding-fee scale for adults was sent to all Idaho PKU families, PKU dietitians, and advocacy organizations. In response to this letter, CSHP received two phone calls from adult PKU clients and their families, expressing concern that they will be expected to prepay costs they owe. CSHP will continue to facilitate the ordering and supply of PKU formula and medical foods to all Idaho PKU clients regardless of age. We will continue to provide medical formula and foods at low or no cost to children with PKU. In summary, we are now requesting two major changes to the Rule:

1. The provision of medical foods in addition to formula; and
2. Pre-payment of client's obligated costs.

Senator Darrington asked, what is the difference in wholesale cost from the Department to the client and retail cost? **Ms. Spencer** responded there is no difference in cost. **Senator Darrington** asked, what would be the advantage of the client going to the Department prepaying and getting it and going and buying it from a health food store or the pharmacy or wherever? **Ms. Spencer** replied the formula is by prescription. There are so few consumers of this medical formula in Idaho and the state is providing it so the pharmacies don't carry it. We order the formula and have it directly shipped to the client. **Senator Darrington** asked, if it is less than 100 clients? **Ms. Spencer** replied 26.

Senator LeFavour asked, what is the cost to an individual in the course of a year? **Ms. Spencer** replied a case of formula, which is six cans, costs an average of \$165. Adults consume between 2 and 6 cases a month. The range of cost per adult is \$2000 to \$24,000 per year with an average cost of \$6000 per year.

Vice Chair Broadsword asked, if the medical foods are so much less than the formula and the clients prefer the foods, can you tell me why the Department didn't choose to just buy the medical foods rather than medical formula and not totally cut the program from the budget? **Ms. Spencer** replied PKU patients, particularly children, still need the formula for complete protein, particularly during their developmental years. **Vice Chair Broadsword** stated you said most adults prefer the medical food and don't necessarily need the formula any longer and that the medical foods were much less expensive. How much less expensive and if it was enough to make up the difference in the budget, why would we continue to fund the program. **Ms. Spencer** replied the benefit of the formula to the adult clients is, without the formula, many of the adult clients will have some side effects such as itchy and uncomfortable skin due to the buildup of toxins from the phenylalanine. Many of the clients suffer from a dulled effect, loss of cognitive ability resulting from the buildup of those toxins. Having the medical formula prevents that in helping manage their diet. **Vice Chair Broadsword** said so it's not the medical food, it's the formula. Is that the only option? **Ms. Spencer** responded it varies considerably in

each PKU client how much protein they are able to ingest and continue a normal activity. Some clients of PKU may be able to have a hamburger a week and manage fine while others may have a medical need to have a greater increase of the medical formula to provide them with their limit of protein.

Vice Chair Broadsword asked, during the meetings that were held with interested folks across the State, did the Department make it clear that they were going to totally drop the program and they would not be funded in the future? **Ms. Spencer** replied at the time that we held our public meetings we had not been asked to hold back general funds. When that occurred we sent a letter to all PKU families, children & adults, explaining the situation that we would be proposing a prepayment of formula and all medical foods be required. **Vice Chair Broadsword** asked, is there a safety net in place for these folks? **Ms. Spencer** replied there have been times when we experienced a shortfall that the manufacturers of the formula have assisted. There has not been a time when the advocates of the organizations have stepped in. It has been covered by the State or the manufacturer.

Senator McGee stated it was his understanding that the children with this condition are still covered in the program but there are a couple of families that the Department is concerned about or the families have expressed concern to the Department regarding prepay. He then expressed interest and requested followup regarding what the Departments efforts have been to place those two families in touch with the formula company and what the response from those formula companies might be in regard to offered assistance with the cost of the formula. **Ms. Spencer** replied the formula companies, not just in Idaho but across the country, do not have the same level of assistance programs as many of the pharmaceutical companies do. You are usually looking at a very small population and they do not have those types of far reaching assistance programs. **Senator McGee** asked if we were doing all we can to assist them in that process and can discover if there programs available.

Senator LeFavour asked what is the income range of the families of concern and how often are new families admitted to the program. Are some of the kids aging out and what is the Department projecting in terms of that? **Ms. Spencer** replied there are three to four children born per year in Idaho with PKU. In the coming fiscal year we will have two more children reaching the age of 18 and going into the adult program. Because there are such limited requirements on this program, and they do accept insured patients, the department has very little income information on these clients. The diagnosis for PKU is sufficient for the service.

Vice Chair Broadsword asked if the Department has worked at all with the Department of Insurance to develop a rule that would require private insurance to cover this medically necessary treatment? **Ms. Spencer** responded the Department would be very interested in assisting the Department of Insurance with that outcome.

Vice Chair Broadsword asked will the Division of Health instigate that discussion with the Department of Insurance. **Jane Smith**, Director, Division of Public Health, Department of Health & Welfare, responded if this is the direction the committee would like the Department to go, they absolutely will. The Department can provide information regarding what other states offer, the language that is used. There are 31 states that provide coverage of PKU formula and or medical foods. **Ms. Smith** indicated she did not know what the impact on the State would be, however, when Oregon put language on the books for insurance to cover PKU, there were so few clients that the impact was an unremarkable increase to the rates. **Vice Chair Broadsword** stated that she would appreciate it if Ms. Smith would meet with her to instigate the discussion with the Department of Insurance to get legislation brought forward this year. Ms. Smith agreed to follow through.

Senator LeFavour asked, if the insurance companies were required to cover the cost of the children would that allow adults to be covered? **Ms. Spencer** replied unfortunately no. The children are covered 100% with federal funds which are designated through children services.

Senator Bock asked, if the prepayment requirement is a finance mechanism, is that correct. **Ms. Spencer** replied, they way it operates now is the Department bills the client three times and if we do not receive payment, it is written off. **Senator Bock** asked, why was it necessary to implement a prepay program unless there was a significant shortfall in the departments budget? **Ms. Spencer** replied the rule, as it was originally written, indicated that the program began receiving a general fund appropriation in 2002 to cover those costs. **Senator Bock** stated that if requiring prepayment was putting these clients at risk why not bill them after the fact? **Ms. Spencer** replied we do bill them after the fact and the state collection system is to bill three times. If we do not receive payment then it is written off.

Senator Darrington stated the fact is no one has ever paid and that he remembered the fight that they had to cover these PKU people. It would take legislative action to mandate insurance coverage is that correct? There wouldn't be any provision for the department to negotiate with the companies absent legislative action. **Ms. Smith** responded it was her understanding that it would take legislative action. Senator Darrington stated that he has two brothers living in his community. One takes \$14,400 of formula a year and the other takes \$9,600 worth of formula a year. One has a common job and the other has a real common job. If you take \$114,400 and \$9,600 out of a common job, that's about all you have. Senator Coiner stated the Director of Insurance is the only one that should be covered under some rule so the discussions are going on with the insurance company now and there is legislation drafted to deal with it I'm hopeful to see legislation so that it is clear one way or another.

Senator Darrington said there was indication last year that the pilot program for mental health coverage by insurance was in fact cost effect. Testimony was provided to the committee to that affect. The numbers are so limited that absent a PKU program the insurance companies might have to provide a half of a million dollars for somebody.

MOTION

Senator McGee moved to approve Docket 16-0226-0801. The motion was seconded by **Senator Hammond**.

**SUBSTITUTE
MOTION**

Senator LeFavour moved to hold Docket 16-0226-0801 pending the resolution of the insurance issue. The substitute motion was seconded by **Senator Bock**.

Senator Darrington asked what is the total cost of the PKU program for adults in Idaho? **Ms. Spencer** responded the appropriation for this fiscal year is \$106,200 with a projected shortfall of \$32,675. **Senator Darrington** stated that this is a \$140,000 program and he was thinking in terms of a program where there was cost match, for example, the client could put up a match for a state contribution. Senator Darrington also stated that does not like mandates on insurance companies legislatively. He wishes insurance companies would step up to the plate and do what they ought to do. However, they are just like any other business. They are not going to do any more than they have to because their bottom line is as important to them as our bottom line is to the State. The reason for the rule obviously is because Health and Welfare is looking at every single program in every single division where they can save a buck. It's not optional.

Senator LeFavour stated if there was resolution of an insurance issue a number of recipients may not need this program any longer. If the remainder of recipients could be put on a sliding scale program so if their income is adequate, they would pay for their own formula and this would change the total cost substantially.

Senator Broadsword reminded the committee they had to either approve or reject this rule. They cannot change the rule during this process.

Senator McGee spoke to the original motion and stated that this is not the first time that the committee has dealt with this issue. This is an emotional and in many cases tragic issue but the fact is we have asked the Department of Health and Welfare to make some very hard decisions. **Ms. Spencer** and her agency have come with this proposal and we have all seen the budget numbers now, we know the dire situation we are in as a State and it certainly doesn't mean that we shouldn't look at these individually on a case by case action. However **Senator McGee** said, he is convinced that we can work on this and there sounds like there is a possibility for some legislation. The fact is, if we are going to say no every time one of these comes up it is going to be a long session and we will be back this summer because the money is not there. He stated he is extremely sympathetic to this situation and he will vote in favor of the original motion but stands ready to participate in any legislation that may come up involving the Department of Insurance or involving formula manufacturers.

Senator LeFavour stated that although the committee cannot change the rule, legislation language might address what may be needed to address this section of welfare code. It may change the way we handle this particular benefit so by rejecting or holding the rule, we may still be able to address this issue. Obviously at a later date we will know better what the cost would be because we would know how many individuals would be covered by private insurance.

Vice Chairman Broadsword commented that the committee has to be finished with rule reviews by February 6th. **Vice Chairman Broadsword** spoke in favor of the substitute motion. She stated that holding it for a week or week and a half until they can get more information on what is being proposed and what possible changes might not be a bad idea.

Senator Coiner stated that he believed the committee could hold this rule until further information was available.

Senator McGee commented if **Vice Chairman Broadsword**, as chairman of the rules committee, wished to hold this rule in committee, he would withdraw his motion. However, he warned the committee that this was just the tip of the iceberg and that this was going to be a very difficult session. There will be a lot of tough decisions to be made and by putting this off a week might temporarily help us solve the problem but again there will be much more of this to come. Senator McGee stated if it was the Chairs wish to hold this rule for further information, he would withdraw his motion.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (attachments 4).

**AMENDED
SUBSTITUTE
MOTION**

Senator Darrington made an amended substitute motion to hold Docket 16-0226-0801 in committee until Tuesday, February 3rd. The amended substitute motion was seconded by **Senator LeFavour**. The motion carried by a **voice vote**.

23-0101-0801

Relating to Rules of the Idaho Board of Nursing (Pending)

Sandra Evans, Executive Director, Idaho Board of Nursing, stated Rule Docket 23-0101-0801 accomplishes a single objective. It permits the Board of Nursing discretion in granting Idaho licensure by interstate endorsement to applicants who do not meet strictly defined academic and examination requirements but who demonstrate professional competence through alternative measures. The rules were published as proposed on 9/03/08 and as pending on 11/05/08. There were no public comments received in response to either publication.

Ms. Evans said under existing rules, nurses initially licensed by another state who are seeking licensure by endorsement in Idaho are required to

meet the same strictly defined education and examination criteria that nurses initially licensing in Idaho are required to meet at the time application is made. However, some of these applicants do not meet criteria as defined and, despite having safely practiced in other states for a number of years, are either denied Idaho licensure or are faced with having to complete additional education and testing in order to be licensed in our state. The Board believes that under certain unique circumstances, nurse competence can be determined outside the existing processes and criteria. The proposed rule allows the Board case-by-case discretion in making these determinations. The proposed rule allows the Board, under appropriate scrutiny, to decide when the primary goal of licensure has been adequately demonstrated. It allows for an exception to defined criteria, thereby authorizing otherwise qualified nurses to be licensed to practice in Idaho.

Senator Bock asked if there is any system of reciprocity between states regarding licensing of nurses. **Ms. Evans** replied one process is endorsement where criteria previously met in another state is recognized and then impose any additional criteria that might be unique to our State. In addition the Idaho Board is a member of the Nurse Licensure Compact which is an agreement between 23 states that allows mobility between the compact member states. A license issued by the resident of a compact state grants the privilege to practice in any other member state.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (attachments 5).

MOTION

Senator Hammond moved to approve Docket 23-0101-0801. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

22-0101-0801

Relating to Rules of the Board of Medicine for the Licensure to Practice Medicine and Surgery and Osteopathic Medicine and Surgery in Idaho (Pending)

Nancy Kerr, Executive Director of the Idaho Board of Medicine, stated these rules were published in the September 2008 Idaho Administrative Bulletin, Volume 08-9 (page 148-153), at that time all licensees were informed of and invited to comment on the proposed changes through the Board newsletter. During the 21-day comment period, no comments regarding the proposed rules were received.

The rules were published without change as pending rules in the December 2008, Idaho Administrative Bulletin. The pending rule defines a monetary amount for the disclosure of malpractice payments on application. The rule anticipates changes to the structure of the national licensing examination and eliminates the reference to the current three-step structure. The rule also corrects some grammatical errors. Most importantly, the rules provide for a

license by endorsement that will allow expedited licensure for qualified physicians with no significant malpractice or disciplinary action by eliminating the redundant paperwork.

The rule will allow the Board to utilize existing federal and national databases to verify the application information of qualified applicants with no significant discipline or malpractice history. They can accept an unencumbered license in another state as equivalent to primary source verification of medical school, and post graduate attendance and other redundant requirements of each state of licensure.

The rule also provides a requirement for service on pre-litigation panels as established in Idaho Code § 6-1001 for medical malpractice claims against physicians and Idaho hospitals. The rule establishes the requirement for service on panels by physicians of at least once in a two-year period, provides a mechanism for excusing the service requirement by the attorney panel chair, and penalties for non-compliance.

Senator Darrington stated that he understood the med-mal issues. He questions regarding licensure by endorsement the simple fact that a med-mal claim absent disciplinary action or negative peer review would not be a disqualification for licensure by endorsement. **Ms. Kerr** responded a certain dollar amount was set previously in Idaho Code by the Patient Freedom of Information Act. Claims less than \$50,000 are considered non-significant malpractice claims.

Senator Darrington asked, regarding the license by endorsement, is there a compact by which licensure endorsement may occur in compact states or is it all states? **Ms. Kerr** responded at the present time there is not a compact for physician licensure among varying states. There is a portability project, of which Ms. Kerr is the Western Chairman, that is attempting to have Boards look at their rules and adopt a similar model. Rhode Island is presenting our rules to their legislature because our rules were the model presented and are being used by the Federation of State Medical Boards to be brought forth to other states as the model. **Senator Darrington** asked, how does this relate to international schooling, for example, Canadian or Caribbean schooled physicians? **Ms. Kerr** responded this rule does not distinguish amongst internationally trained physicians. Canadian graduates have always been treated like U.S. trained. There is no distinction between Canadian trained and U.S. graduates. International graduates again if the requirements are met for a license in another state we will assume they will meet our requirements for licensure and have the appropriate education and training.

Senator Bock asked, how do we protect against physicians coming into the State that have a pattern of negligent practice which resulted in claims of less than \$50,000? **Ms. Kerr** replied malpractice claims under \$50,000 could indicate an issue of physicians practice, more likely however a pattern of claims under \$50,000 indicate the malpractice insurance carriers decision making ability. Many times physicians are not consulted on settlements made under \$50,000 and do not have the opportunity to present any information. It is a decision made by the malpractice carrier to settle the claim as a less costly option. **Senator Bock** stated that he would have to respectfully

disagree. He stated he has a malpractice policy in the legal practice and if his carrier were to represent him in a malpractice claim, as far as he knew, he would always have the right to object. The carrier cannot settle a lawsuit for him, if that were to ever occur.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (attachments 6).

MOTION

Senator Darrington moved to approve Docket 22-0101-0801. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

22-0103-0801

Relating to Rules for the Licensure of Physicians Assistants (Fee Rule)

Nancy Kerr, Executive Director of the Idaho Board of Medicine, stated the rules were published in the September 2008, Idaho Administrative Bulletin, Volume 08-9 (page 154-165), at which time all licensees were informed of and invited to comment on the proposed changes through the Board newsletter. During the 21-day comment period, no comments regarding the proposed rules were received. The rules were published without change as pending rules in the December 2008, Idaho Administrative Bulletin. The rule more clearly defines the application requirements and clarifies the alternate supervising physician role and responsibility.

The rule adds the requirement for a criminal background check consistent with Idaho Code §54-1810 for physician assistants. It provides more consistent language with other Board of Medicine rules and clarifies requirements for licensure and renewal of license. The rule expands the fee schedule for issue and renewal of licensure with no fee increase imposed at this time, but does increase the penalty fee for failing to renew a license in a timely manner from twenty-five dollars to fifty dollars. Most importantly, the rules provides for a volunteer license that allows non-compensated service in accordance with Idaho Code § 54-1841 similar to physician volunteer license.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (attachments 7).

MOTION

Senator Hammond moved to approve Docket 22-013-0801. The motion was seconded by **Senator McGee**. The motion carried by a **voice vote**.

PRESENTATION Idaho Council on Industry & Environment - An Overview on Administrative Rules, Policy and Stringency

A presentation providing an overview of Administrative Rules, Policy and Stringency was given to the committee by: Norm Semanko, Idaho Water Users Association; Roy Eiguren, Eiguren Public Law & Policy; Jack Lyman, Idaho Mining Association; and Joan Cloonan, DEQ Board Member and Environmental Consultant.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (attachments 8).

ADJOURNMENT Vice Chairman Broadword adjourned the meeting at 4:45 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 27, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed participants. **Chairman Lodge** then turned the meeting over to **Vice Chair Broadsword** to begin presentation of the rules.

RULES

16-0602-0802 Relating to Rules Governing Standards for Child Care Licensing (Pending/Fee)

Larraine Clayton, Division of Family and Community Services, Department of Health and Welfare stated, there are three different sets of rules and five proposed amendments this session that will affect child care. They are: 1) Criminal History – Rules for criminal history check on applicants. The amendment adds to disqualifying crimes and increases the fee; 2) Idaho Child Care Program – Rules over the child care assistance program; and the three amendments will: a) Change how we calculate self employment income; b) Require background checks for all ICCP eligible providers; and c) Align recordkeeping requirements that support the Fraud Units statute changes that were passed last year; and 3) Child Care Licensing – Rules that establish requirements for commercial (13 or more children) daycare licensing, and certified care (7 to 12 children).

These changes in the child care licensing rules will provide consistency between division rules by increasing the fee for criminal history and background check through the Department of Health and Welfare from \$45.00 to \$55.00 for employees, volunteers, household members and others who have unsupervised direct contact with children in a day care setting. The criminal history and background check is a critical component of state licensing and certification, and provides a foundation for the health and safety of young children.

Idaho Code specifies the criminal history and background check will be done by the Department of Health and Welfare for state licensing and certification. Idaho Code also stipulates a ceiling cost of \$100.00 for obtaining a day care license. In order to obtain a license, the applicant must pass a fire inspection, health and safety inspection and a criminal history and background check. In code, the fee is limited for the applicant; however, language is silent on other individuals such as employees, family members, and volunteers. The section of the child care licensing rules this docket addresses is almost entirely the increase in cost for the criminal history and background check. Other changes provide clarity and basic clean-up. District has been replaced with "public" and "departments" replaced with "districts." This correction has been made at the request of public health district leadership to reflect the fact that each public health district is a separate entity rather than a department of an agency.

A distinction has been made between application and inspection and the fees paid directly to the Department. The fee of \$45.00 has been removed for criminal history and background check in preparation for the increased fee. Additionally under that section, "owner, operator, employee and volunteer at the day care center requiring a criminal history check" have been removed to allow for the increase in fee for everyone except the licensing applicant. We are removing the sentence "There shall be no additional fee charged for this criminal background check." This sentence is redundant when the exact fee is stated in IDAPA 16.05.06. The next part of this section speaks to authorization of the Department to complete criminal history and background checks for those who voluntarily desire to comply with licensing and certification, the addition speaks to those that are required to comply.

The Department did not hold a hearing on these rules as they are a technical change to align with a rule change in 16.05.06. Comments from Legislative Services were reviewed noting rules vary as to the age when youth are required to obtain a criminal history check. This set of rules was not changed as they are in direct alignment with Idaho Code. **Senator Bock** said application fees stated in the rule on page 27, 03Aii, indicate \$45 for the initial application and on page 28 a \$55 fee is indicated, what is this discrepancy? **Ms. Clayton** replied the difference is because in Idaho Code the person who is the applicant for the license for the setting there is a limitation on what they can pay for that license.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Senator Coiner moved to approve Docket 16-0602-0802. The motion was seconded by **Senator LeFavour**. The motion carried by **voice vote**.

Scott Burlingame, Program Specialist for the Department of Health and Welfare—Division of Family and Community Services—Navigation Services and Service Integration, stated these funds are administered by Resource and Services Navigators, of whom there are 24 across the State. It's role is to stabilize communities and strengthen families through short term intervention and linkage to appropriate resources and services. Emergency assistance funds are one tool by which Navigators are able to help families with children deal with crises that might otherwise lead to homelessness, long term dependency or disintegration of family integrity. The proposed changes are recommendations of a workgroup convened within Health and Welfare and are intended to: 1) clarify language; 2) make the rules congruent with practice; and 3) eliminate obsolete language. Several of the changes are simple editing for clarity or consistency. For example: The change in section 010.01.a is the capitalization of one letter. The change in the same section b is a capitalization and the substitution of the words, "the following," for the word "these." Other changes substitute language that is clearer than was previously the case. For example: Section 010.07 defines "Destitution," as the state of being in extreme need from lacking possessions or resources. Section 010.13 makes the definition of "Youth" gender neutral. Changes in section 100.02.a streamline language about who can be served using Emergency Assistance funds. In section 300.02, language authorizing the use of Emergency Assistance for "Placement Payments," is eliminated. Foster care is now funded through Title IV-E funds rather than Emergency Assistance funds.

In sum, these changes are for the purpose of clarifying and simplifying the language of the rule, making the rule consistent with practice and eliminating obsolete language. The changes proposed are cost neutral and have been the subject of negotiated rulemaking. **Chairman Lodge** stated it is troublesome to her that in this rule the definition of child is stated as someone under the age of 18 and youth is someone that is 18 to 21 years of age. She has considered youth to be 14 to 18 and adult is 18 years of age could **Mr. Burlington** explain why. **Mr. Burlington** replied this sets up a standard that is adhered to legally that a child under the age of 18 is a child and a person that has reached 18 has some options regarding services so they are considered a youth. **Senator LeFavour** asked for clarification regarding the addition of the word destitution to the language in 100.02.c, page 178 of the rule. **Mr. Burlingame** deferred to Curtis Loveless, Chairman of the Committee that drafted the proposal.

Mr. Loveless, Resource and Service Navigator, Department of Health and Welfare, Region 5, Twin Falls Office, replied he did head the workgroup that made the recommendations to these proposed rules. As they reviewed these rules to bring them into compliance with standard practice throughout the State, the decision to change the language to include destitution as a description was more specific around the risk that is actually inherent to the children and the risks they are facing. **Senator LeFavour** stated that one is more material and the other is more health oriented. **Mr. Loveless** responded that the desire in doing this was to

address the material needs that would help the family maintain the integrity of the household and those things that families are naturally able to do to provide for the safety, health and well-being of their children. **Vice Chair Broadsword** asked if this rule was to bring us to compliance with federal law, is that correct? **Mr. Loveless** responded yes to bring us into compliance with federal law as well as aim to make congruent the 1993 State law which has been grand-fathered in through the TANF law. **Vice Chair Broadsword** asked if the committee were to reject this rule would we be in violation of the TANF law and lose federal funding. **Mr. Loveless** replied the current version of the rule does meet basic requirements. These changes enhance our ability to help families under crisis situations in unprecedented emergency situations within their family. These rule changes put us more in compliance with state practice and TANF guidelines. If these rules were rejected the consequences may be possible loss of funding through the TANF funds.

Mr. Burlingame stated the intent of these rules is to allow us to intervene in families in the short term. Part of the destitution language is about families that are in uncomfortable circumstances and we want to be very clear that we do not necessarily try to meet those needs of families that are uncomfortable. We are looking at families where there is a sincere serious short term risk to children and the TANIF rules are specific about that and our hope is to be clear about that. So, the change in the rules is an effort to be consistent with that and to be consistent with declaring where we would spend the states money on behalf of children. **Senator LeFavour** stated the rule used to state health or safety, not unfit comfort. **Mr. Burlingame** said the committees work concluded that health and safety was too broad and determined that anyone was eligible. This language change was an attempt to be more clear, consistent and set a standard for the people we are serving.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 2).

MOTION

Chairman Lodge moved to approve Docket 16-0613-0801. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

16-0701-0801
and
16-0403-0801

Relating to Behavioral Health Sliding Fee Schedules (New Chapter) (Pending)
Relating to Fees for Community Mental Health Center Services (Pending)

Scott Tiffany, Bureau Chief for Mental Health in the Division of Behavioral Health, Department of Health & Welfare, stated this is a pending rule that provides the Division of Behavioral Health a sliding fee scale for adult mental health, children's mental health, and substance use disorders. The pending tab reflects the changes since the original rules were published. These rules consolidate the process for determining fees

for consumers of behavioral health services into one new chapter. Fee rules existed for years in three separate chapters which were rewritten and updated for the Division of Behavioral Health. The sections pertaining to fees from the separate chapters were combined into one docket. The fees are based upon the cost of the service and the ability of the consumer to pay based upon their income. Considerations include the family household income, allowable deductions and the current federal poverty rate to determine a financial obligation the consumer will incur for behavioral health services. Three public hearings and town hall meetings were held in April & May 2008 in Coeur d' Alene, Pocatello and Boise. There are several changes since this committee last reviewed this Docket. On page 42, the definition of allowable annual deductions was changed to be consistent with the annual deductions as described in section 400.c. Legal guardians under Idaho law are not financially responsible. Only the adult individual or parent of a child receiving services may be financially responsible so any reference to a financial obligation incurred by guardians was removed. Some definitions were modified for clarity. Sections 100 and 200 take into account third party reimbursement before establishing a financial obligation. The table in section 300 includes the words "Federal Guidelines" in direct response to a legislator's comment last year. I would like to draw your attention to section 400.04, entitled "Financial Obligation". This section was modified in response to a comment at the Boise public hearing to limit the total annual financial obligation incurred. Section 500 raises the federal poverty level from 175% to 200% of poverty for those eligible for substance use disorder services and more closely aligns the substance use disorder fee schedule with the mental health fee schedule.

Please note the range and percent cost of responsibility parallels the mental health schedule. Supplemental Security Disability Income, or SSDI, has been excluded for income counting purposes. The term "Serious Emotional Disturbance" was deleted to be consistent with IDAPA 16.07.37, the pending Children's Mental Health Services chapter. I have not covered each specific section, but will respond to specific sections should the committee have any questions. Bethany Gadzinski, Bureau Chief for the Substance Use Disorder Program, is also here and could address any specific questions related to sections 500 and 600. There is also a companion docket **(16-0403-0801)** that repeals the existing fee rules.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 3 & 4).

MOTION

Senator Darrington moved to approve Docket 16-0701-0801 and the companion Docket 16-0403-0801. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

16-0710-0801

Relating to Behavioral Health Grants (New Chapter)

Scott Tiffany, Bureau Chief for Mental Health, Division of Behavioral Health, Department of Health and Welfare, presented docket number 16-0710-0801 a pending rule that provides the Division of Behavioral Health a standard process for announcing, scoring, and awarding of Development grants according to *Idaho Code, Section 39-3134A*. Development grant funding assists to increase the availability of mental health and substance use disorder services. Three public hearings and town hall meetings were held in April and May 2008. **Senator Darrington** asked if this is all new rule that provides the Division a standard process for awarding Development grant funding? **Mr. Tiffany** responded that was correct and that this is a pending rule that was temporary last year.

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 McGee moved to approve Docket 16-0710-0801. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

16-0733-0801

Relating to Adult Mental Health Services (New Chapter)

Scott Tiffany, Bureau Chief for Mental Health in the Division of Behavioral Health, Department of Health and Welfare discussed docket number 16-0733-0801, a pending rule that provides the framework for eligibility and provides an appeal process for adult consumers for the Division of Behavioral Health. This chapter only applies to services provided by or contracted through the Division of Behavioral Health. Three public hearings and town hall meetings were held in April and May 2008 in Coeur d'Alene, Pocatello and Boise. Two changes have been proposed since these rules were presented last year. First, on page 230, the definition of "Sliding Fee Scale" has been modified by replacing "cost" with "financial obligation". The remaining change, found on page 233, replaces "amount charged" with "financial responsibility".

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 McGee moved to approve Docket 16-0733-0801. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0725-0801
and
16-0614-0801

Relating to Prevention of Minors' Access to Tobacco (Rewrite)

Relating to Prevention of Minors' Access to Tobacco (Rewrite) (Pending)

Terry Pappin, Program Specialist, Division of Behavioral Health, Department of Health & Welfare, responsible for oversight of the Idaho Tobacco Project, testified on the changes to governing the Prevention of Minors' Access to Tobacco Docket 16-0725-0801. Two major changes were made to the pending rules. The first change is found throughout the

rules replacing the phrase Division of Family and Community Services with Division of Behavioral Health. This will align the rules with other new chapters in the Division of Behavioral Health. The other change is found in subsection 020.02 Permits. This change to the rule was undertaken to clearly define when a permit may be opened, closed and revoked. By defining when a new permit is issued, when a permit may be closed and when a permit may be revoked, the Department will be able to prevent permittees with multiple citations from closing their current permit. This will prevent them from applying for a new permit solely to evade the penalty system established in The Prevention of Minors' Access to Tobacco statute. These definitions are needed to ensure that all tobacco permittees are treated fairly. This new rule will have no fiscal impact on the state general fund.

The Department requests the repeal of the existing chapter of rules in Docket 16-0614-0801 to align them with the other new chapters in the Division of Behavioral Health.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 7)

MOTION

Senator Darrington moved to approve Docket 16-0725-0801 and the companion Docket 16-0614-0801. The motion was seconded by **Chairman Lodge**. The motion carried by **voice vote**.

16-0717-0801

Relating to Alcohol and Substance Use Disorders Services (New Chapter)
(Pending)

Bethany Gadzinski, Substance Use Disorder Bureau Chief, Division of Behavioral Health, presented Docket 16-0717-0801, Alcohol and Substance Use Disorders Services, a pending rule and amendment to the temporary rule that was approved during last year's legislative session. There are three changes made based on information received from stakeholders. Revisions to the temporary rule approved last year were made to the definition section based on public comments given at three rule hearings this past summer.

The first change of this rule is on page 200. On this page the Department has added a definition for "child" so that private treatment providers may treat those children under the age of 14. The second change is found on page 202. The definition of Federal Poverty Guidelines has been changed so that the Bureau has more latitude in defining household income. This change will allow us to mirror how mental health determines financial eligibility. Currently, if an adult child lives with their parents, we must use the income of the parents in determining financial eligibility even if they are not providing financial assistance to the adult child. This change in language will allow the department to only use the potential client's income for the determination of income eligibility. The final change is also on page 202 under item 18. This definition is being deleted as "functional impairment" and is not used within the treatment of substance use disorders. **Senator Lodge** stated she had questioned the

definitions of child, adolescent and adult in previous testimony and noted the definition stated in **Ms Gadzinskis** testimony was more inline with what she was looking for, why do these definitions not correspond? **Ms Gadzinski** responded she did not have federal guidelines around these definitions. The definitions in this rule are aligned with what would normally be thought of as adolescent, child and adult.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 8)

MOTION

Senator LeFavour moved to approve Docket 16-0717-0801. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

16-0320-0801

Relating to Electronic Payments of Public Assistance, Food Stamps, and Child Support (Pending)

Ike Kimball, Chief of Financial Services, Department of Health & Welfare, presented docket 16-0320-0801 found behind tab 18 of your packet. There are two changes in this proposed rule. First, there are law changes at the federal level, with the enactment of the 2008 Farm Bill, which extend the number of days a food stamp participant can access their benefit. Due to this change in federal code, the Department is increasing the period in which participants may access their benefits from 270 days to 365 days. This change will benefit both participants receiving cash assistance and food stamps, with an effective date of October 1, 2008.

Second, the Department is changing the way that electronic payments are made to child support recipients. Currently, some child support payments are provided through an electronic payment card. We refer to this as the Idaho Quest Card. The Department will now remit these child support payments to a VISA debit card. This will provide more convenience as a VISA card is accepted at more locations than the current electronic benefit card. The fiscal impact of this change is an annual savings of approximately \$200,000. This fiscal impact has already been adjusted in the Department's budget. The effective date of this change is December 1, 2008.

Vice Chairman Broadsword asked if there was a fiscal impact to these changes? **Mr. Kimball** responded the change due to the branded debit card does have a fiscal impact, it is an annual savings of \$200,000. This fiscal impact has already been adjusted in the Department's budget.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 9)

MOTION

Senator Hammond moved to approve Docket 16-0320-0801. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

S1014

Relating to the Naturopathic Physicians Licensing Act

Senator Broadsword presented proposed legislation to repeal Chapter 51, Title 54, Idaho Code. This section of code deals with the Naturopathic Licensure Act. The original bill passed in 2005 and was modified in 2008. It was the intent of the legislature to allow the Naturopaths to be licensed and proceed with rulemaking. There continues to be total disagreement between the factions of the Naturopathic industry concerning or should not be allowed a license. The groups have failed to produce rules for licensure since the code was put in place four years ago. It is time to stop the unneeded expenditure of time and energy on this issue. Repealing the code will allow the group to come forward with legislation in the future to address licensure without the restrictions put in place by current law.

Senator Bock asked if this rule is passed does it become a non-issue?

Senator Broadsword responded it was her belief that was true then expressed it was her understanding that the current rule that is proposed for this year does not match statute. **Ken McClure** testifying on behalf of the Idaho Medical Association, stated the Idaho Medical Association supported the repeal of Chapter 51, Title 54, Idaho Code, of the Naturopathic Physicians Licensing Act. **Senator Bock** asked what happens to the naturopathic physicians if this is repealed? **Mr. McClure** responded they will continue to be able to practice naturopathy under the scope of practice as it existed before this bill passed. **Dr. Sara Rodgers** testified in support of the proposed legislation to repeal Chapter 51, Title 54 Idaho Code. (see attachment 10) **Dr. Joan Haynes, NMD**, testified in support of the proposed legislation to repeal Chapter 51, Title 54, Idaho Code. (see attachment 10A)

Senator Coiner asked if S1425 of last year were to come back, was the language tight enough to accomplish what needed to be accomplished in statute? **Dr. Haynes** stated that she was part of the writing of the language in S1425 and yes that is the kind of language we would like to see. **Chris Ellis** provided written testimony in support of the repeal. None one testified in opposition of S1014. (see attachment 10B)

Senator Broadsword summarized that this legislation was not working the way it was currently written. This repeal will allow the organization as a whole to have a fresh start and I would encourage the committee to support this repeal.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachments 10, 10a, 10b)

MOTION

Senator Hammond moved to send S1014 to the Senate floor with a do pass recommendation. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:02 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 28, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed participants. **Chairman Lodge** turned the meeting over to **Vice Chair Broadsword** to begin presentation of the rules.

RULES

58-0105-0801 Relating to Rules and Standards for Hazardous Waste (Update of federal regulations incorporated by reference) (Pending)

Orville Green, Waste Management and Remediation Division Administrator, Department of Environmental Quality, stated this is a routine, annual procedure that DEQ performs to satisfy consistency and stringency requirements of the Idaho Hazardous Waste Management Act, (HWMA-Idaho Code, Section 39-4404). This action is also necessary to maintain primacy and authorization from the U.S. EPA for Idaho DEQ to operate the Federal RCRA HW Program in lieu of the U.S. EPA in Idaho. Assumption of primacy over hazardous waste control from the federal government is also required by HWMA, Idaho Code, Section 39-4404.

Public Notices appeared in the August and December 2008 editions of the Idaho Administrative Bulletin. No public hearing was requested or held. The Legislative Services Office and Germane Subcommittees of the Idaho Legislature filed no objections. No written comments were received from the public. Board of Environmental Quality approval was received on October 8, 2008. There will be no increased costs for the regulated community because this is an update to provide consistency with federal hazardous waste regulations which have been promulgated and would be in effect. There are no controversial issues with this rulemaking. This proposed rule is not broader in scope, is not more stringent than federal regulations and does not regulate an activity that is not regulated by the federal government.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Chairman Lodge moved to approve Docket 58-0105-0801. The motion was seconded by **Senator Darrington**. The motion carried by **voice vote**.

58-0101-0703

Relating to Rules for the Control of Air Pollution in Idaho (Rulemaking to ensure that the purpose and applicability of Sections 725 through 729 as they relate to sulfur content of fuels, is clear. (Pending Rule)

Martin Bauer, Air Administrator, Department of Environmental Quality, stated this rulemaking is necessary to clarify the rule and DEQs interpretation of sulfur content in fuels used in fuel burning sources in Idaho. This was a negotiated rule making including stakeholders from industry and environmental consultants. The rule has also been through formal public comment. There are no additional costs to the regulated community due to these clarifications. There are no controversial issues due to this rule clarification. This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Vice Chair Broadsword asked if DEQ had received a request to look at alternative fuels. **Mr. Bauer** replied DEQ had received comment from Idaho Association of Commerce and Industry (IACI) requesting DEQ to look at a rule that would allow alternative fuels. This comment was not addressed in this particular rule making as this rule was a clarification. The rule that IACI was talking about will require State Implementation Plan revision. DEQ has been in contact with IACI and is more than willing to negotiate a rule when appropriate.

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 Coiner moved to approve Docket 58-0101-0703. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

58-0101-0801

Relating to Rules for the Control of Air Pollution in Idaho (Open Burning of Crop Residue) (Pending)

Martin Bauer, Air Administrator, Department of Environmental Quality, stated this rule implements the crop residue burning program in Idaho and was presented to the DEQ Board and adopted as a temporary rule in March of 2008 and is currently effective. This rule is now before you to be approved as a proposed rule. This was a negotiated rule that was the outcome of a mediated agreement between the growers, Safe Air for Everyone and DEQ. Three Negotiated meetings were conducted with growers, SAFE, ISDA, and DEQ. The Nez Perce tribe was also involved during negotiations. HB557 imposed fees of \$2.00 per acre for farmers that want to burn their fields. These rules were the outcome of an agreement and negotiated rulemaking process, so there were no

controversial issues. This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

Vice Chair Broadsword stated she was approached regarding concerns that a penalty may be imposed for non compliance and she does not see reference to that in this rule. **Mr. Bauer** responded this falls under our air quality rules and we use our normal enforcement procedures for violations of this rule. **Vice Chair Broadsword** asked what would the fine be. **Mr. Bauer** responded the fines are based on a matrix based on the deviation and the extent of harm up to a maximum of \$10,000 per violation per day. **Vice Chair Broadsword** stated it was her understanding the folks in the North are used to this type of rule and do not have a problem complying, however, the folks in the South of the state are having trouble adjusting to this type of regulation. Is the Department working with them to solve issues? **Mr. Bauer** replied the Department did outreach, individual training, utilized association newsletters, newspapers, radio stations and had the information posted to the website to spread the word. The Department also sent letters to every Fire Marshall in the state. **Vice Chair Broadsword** asked if the Department has the ability to write a warning for first time offenders rather than a fine. **Mr. Bauer** responded this is a flexibility the Department has.

Senator Bock stated that he thought of the agreement as a short term solution and was curious to know what efforts in the way of research are being conducted to be able to eliminate the field burning altogether. **Mr. Bauer** replied the rule and the regulatory program is not short term. The Department does not have the funding, time or the expertise to do the research, however, he is aware of the ongoing research at the University of Idaho for alternative solutions and stated this issue continues to be of interest to the entire Northwest. **Senator Darrington** stated he wanted to be sure this rule does not apply at all to burning fence lines, ditch lines, drain ditches, or piles of trash. **Mr. Bauer** responded there are other forms of allowable open burning that include weeds along all of the above.

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 Coiner moved to approve Docket 58-0101-0801. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

58-0101-0802

Relating to Rules for the Control of Air Pollution in Idaho (Update of federal regulations incorporated by reference)

Martin Bauer, Air Administrator, Department of Environmental Quality, stated this rule is the Departments annual incorporation by reference of final federal rules as of July 1, 2008. This rulemaking is necessary to ensure that the Rules for the Control of Air Pollution remain consistent with federal regulations. This rule was not a negotiated rule but did include a public comment period and a public hearing. Comments were received and were outside the scope of this rulemaking and resulted in no changes to the rule as proposed. There is no additional cost to the

regulated community and no contentious issues. This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. **Vice Chair Broadsword** commented there must be some way that recent revisions by the federal government could be incorporated without having to revisit this rule annually just to change the date. **Mr. Bauer** responded he did not think the Department could proactively incorporate rules that have not been developed.

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 approve Docket 58-0101-0802. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

58-0101-0803

Relating to Rules for the Control of Air pollution in Idaho (Rulemaking to include additional BMPs for controlling ammonia emissions at dairy farming operations) (Pending)

Martin Bauer, Air Administrator, Department of Environmental Quality, stated in 2006, the DEQ Board passed rules requiring dairies with a certain threshold number of cows to implement industry best management practices (BMP's). The rules outlined a list of BMP's that farmers use to obtain the required amount of BMP's. The rules also allow for additional BMP's to be added as they are developed. This rulemaking is to add the incorporation of zeolite to manure and composting to the BMP list. This was a negotiated rulemaking that included the stakeholders from the original negotiated rulemaking.

There is no additional cost to the regulated community. Using zeolite as a BMP is not a requirement; it is merely another BMP that a farmer may choose. If a farmer chooses to use zeolite, they will be required to purchase it and that will incur cost. There are no controversial elements to this rule. This rule will regulate an activity not regulated by the federal government, and therefore, *Idaho Code, 39-107D section 1,2,5 and 6* apply. The notice of proposed rulemaking clearly specifies that the rule is broader in scope than the federal law. This rule is based on and establishes requirements for best management practices to limit or control the amount of ammonia emitted from dairies, and does not propose a standard necessary to protect human health and the environment. Therefore, *Idaho Code 39-107D section 3 and 4* do not apply to this rule.

Currently the federal government is in the process of amassing information and studies that may eventually result in a regulation of Confined Animal Feeding Operations including Dairies, but as of yet, has not developed a rule, therefore, *Idaho Code 39-118B* does not apply to this rulemaking. DEQ was approached by Ag industries to approve and assign BMP points to allow dairy farmers to utilize zeolite as a BMP to

minimize ammonia from dairy farms. The zeolite binds up ammonia and other constituents that when land applied allows the release of nutrients needed for uptake by the plant. Zeolite also, as a co-benefit, works like kitty litter which should reduce odors as well.

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 LeFavour moved to approve Docket 58-0101-0803. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

58-0108-0801

Relating to Idaho Rules for Public Drinking Water Systems (Revision and Clarification of facility and design standards)

Barry Burnell, Administrator, Water Quality Control, Department of Environmental Quality (DEQ), stated this rulemaking was necessary to modify the existing Idaho Rules for Public Drinking Water Systems to allow the engineering community, via a qualified licensed professional engineer (QLPE), to approve simple water main extensions in cases where a Department-approved facility plan is not in place. This rule allows the QLPE to approve plans and specifications provided that the drinking water system owner submits information demonstrating that the capacity of the system is sufficient to provide additional water quantity at the proper water pressure for the proposed system extension. This pending rule is part three of the facility and design standards rule adoption that was undertaken to meet S1220 that was passed in 2005.

DEQ provided three negotiated rulemaking sessions in April and May 2008. The negotiated rulemaking sessions were held concurrently in three locations: the State office, the Coeur d'Alene regional office, and the Idaho Falls regional office. In addition to publication of the rulemaking notices in the Idaho Administrative Bulletin, the Department posted notices and updates on the Department website.

The Department also provided public involvement by distributing rulemaking information in an email list of interested parties. Overall, approximately 20 members of the public participated in some or all of the negotiating sessions, and approximately 65 members of the public were on the e-mail distribution list. DEQ made changes to these rules based on public comment received. The following organizations participated in some or all of the negotiation sessions: United Water Idaho; Idaho Water Users Association; Idaho Rural Water Association; City of Lewiston; City of Moscow; City of Idaho Falls; J-U-B Engineers; CH2M Hill; Keller Associates; American Council of Engineering Companies; SPF Water Engineering, LLC; Idaho National Laboratory; and Water Systems Management, Inc..

DEQ does not anticipate a cost increase to the regulated community based on the approval of these proposed rules. The regulated community will realize a positive fiscal impact. The community will be able to proceed with simple water main extensions without procuring an engineering

company to first update facility plans. DEQ is not aware of any controversial issues at this time. There is no federal law or regulation that is comparable to plan and specification review and facility standard provisions. However, the federal Safe Drinking Water Act requires primacy agencies (e.g. DEQ) to have a program to ensure that the design of new, or “substantially” modified systems will be capable of complying with State primary drinking water regulations.

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 Hammond moved to approve Docket 58-0108-0801. The motion was seconded by **Senator McGee**. The motion carried by **voice vote**.

58-0108-0802

Relating to Idaho Rules for Public Drinking Water Systems (Incorporation by reference of federal Ground Water Rules)

Barry Burnell, Administrator, Water Quality Control, Department of Environmental Quality (DEQ), stated the Ground Water Rule is a national primary drinking water regulation. The EPA promulgated the ground water rule on November 6, 2006. As a condition of continued primacy, DEQ must adopt this rule within two years of Federal promulgation. Because this rule is an incorporation by reference to a federal rule the focus for public involvement was on the special primacy requirements where the State is provided flexibility in the federal rule. DEQ prepared an issue paper describing the Department’s initial proposal on each special primacy requirement. As a general principle, DEQ followed EPA guidance. They scheduled a negotiating session in June to give the public an opportunity to advise DEQ on these matters. Notice of this meeting was published in the *Idaho Administrative Bulletin* and posted on DEQ’s website. Two persons from the regulated community attended the negotiations, and they supported DEQ’s proposals on the special primacy requirements. EPA submitted the only comment received during the public comment period for the proposed rule and associated DEQ Guidance.

EPA stated that DEQ’s rule and approach to the special primacy issues were consistent with Federal requirements. EPA estimates that the average annual household cost will range from \$0.21 to \$16.54 per year for public drinking water systems that are required to provide treatment or take other corrective actions. The percentage of Idaho’s drinking water systems that may face increased treatment requirements cannot be accurately anticipated prior to collection and analysis of source water samples. DEQ is not aware of any controversial issues at this time. This proposed rule is not broader in scope, is not more stringent than federal regulations and does not regulate an activity that is not regulated by the federal government.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 7).

MOTION

Senator Hammond moved to approve Docket 58-0108-0802. The motion was seconded by **Senator Coiner**. The motion carried by **voice vote**.

58-0108-0803

Relating to Idaho Rules for Public Drinking Water Systems (Incorporation by reference of National Primary Drinking Water Regulations for Lead and Copper)

Barry Burnell, Administrator, Water Quality Control, Department of Environmental Quality (DEQ), stated the Lead and Copper Rule (LCR) is a national primary drinking water regulation. The EPA promulgated the Lead and Copper Rule on October 10, 2007. As a condition of continued primacy, DEQ must adopt this rule with two years of federal promulgation. This rulemaking is incorporation by reference of US EPA adopted rules and did not contain special primacy requirements, therefore negotiations were not held. A public comment period was held for sixty (60) days. No comments were received. Negotiations were not held because this rule is incorporation by reference rule, and no comments were received during the public comment period.

Several of the revisions to the Lead and Copper Rule result in no anticipated changes in costs to the regulated community, and some of the revisions are anticipated to reduce costs. Cost may increase for drinking water systems that exceed the lead action level of 0.015 mg/L. These costs are for activities involving educating the consumer by providing the lead sampling results to the consumers of sampling locations. The per system cost is estimated to be ~\$8 to \$80 every monitoring period. In Idaho, 90% of all systems are on a three year monitoring period. DEQ is not aware of any controversial issues at this time.

This proposed rule is not broader in scope or more stringent than the federal regulations and does not regulate an activity that is not regulated by the federal government. The federal rule is incorporated by reference into Idaho's Rules for Public Drinking Water Systems and is therefore neither more nor less stringent than the federal rule.

Senator Darrington asked if most of these water drinking rules are necessary due to the federal Clean Water Act. **Mr. Burnell** responded that this particular rule is not because of the Clean Water Act but rather the Safe Drinking Water Act and in order for the State to maintain primacy requirements implementing the Safe Drinking Water Act, we are required to adopt the rule. **Vice Chairman Broadword** asked, why paragraphs A and B were removed from the section on page 574. **Mr. Burnell** replied the two sections removed would have been more stringent than the federal rule so we removed them.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 8).

MOTION

Senator LeFavour moved to approve Docket 58-0108-0803. The motion was seconded by **Senator Lodge**. The motion carried by **voice vote**.

58-0111-0801

Relating to Ground Water Quality Rules (Rulemaking to clarify portions of the Ground Water Quality Rule to promote consistency in application of the rule to mining activities)

Barry Burnell, Administrator, Water Quality Control, Department of Environmental Quality (DEQ), stated the purpose of this rulemaking is to clarify portions of the Ground Water Quality Rule to promote consistency in application of the rule to mining activities. Both the Department and the regulated community desire a clarification to the current active mineral extraction area section of the ground water quality rule. This rulemaking started in 2007 and was continued in 2008. Five meetings were held to negotiate the rule. Negotiated rulemaking meetings were held in Boise with videoconference links to Pocatello, Idaho Falls, and Coeur d'Alene. Notice of negotiated rulemaking was published in the Idaho Administrative Bulletin in April, email notifications were sent out to all that attended negotiated rulemaking meetings in 2007. Information on meeting times and locations was posted to the DEQ webpage.

The following organizations participated in some or all of the negotiation sessions: Bureau of Land Management; Forest Service; Environmental Protection Agency, Idaho Mining Association, Atlanta Gold Corporation, JR Simplot Company; Thompson Creek Mines; Agrium; Monsanto; Centra Consulting; SBS Associates; Idaho Conservation League; Greater Yellowstone Coalition; Earth Justice; Caribou Clean Water Partnership; Battelle Energy Alliance; Baird Hansen and Williams; Stoel Rives; and Kinross.

During the rulemaking negotiations the Idaho Mining Association included proposed language for payment of a \$2,500 fee to offset agency administrative costs associated with setting a point or points of compliance at a mining site. No additional cost to the regulated community is expected.

Consensus could not be reached on two issues: 1) types of mining activities to be included in setting a point of compliance. Environmental groups preferred a restricted list of activities (extraction and excavation) and the mining groups preferred a list that included remote processing areas. The Department's proposal includes the listed mining activities in Ground Water Policy II-c with exception of drilling and limits to processing; and 2) length of time ground water degradation can persist. Conservation and environmental groups wanted a time limit on degradation. The mining industry prefers that degradation be allowed as long as activities are conducted in accordance with best management practices, do not injure other beneficial uses of ground and surface water, and are restricted to the mining area.

These issues were addressed in accordance with the Ground Water Quality Plan which recognizes that ground water and minerals are both vital to our lives and at the same time that ground water quality needs to be protected. The Ground Water Quality Plan states "It is the intent of the Ground Water Quality Plan to strike a balance between these two resources." DEQ feels that the current proposed rule strikes a balance

between these competing interests and complies with the Ground Water Quality Plan.

Section 39-107D, Idaho Code, provides that DEQ must meet certain requirements when it formulates and recommends rules which are broader in scope or more stringent than federal law or regulations. There is no federal law or regulation that is comparable to the Ground Water Quality Rule. Therefore, the proposed changes to the rule are not broader in scope or more stringent than federal law or regulations.

Section 39-107D, Idaho Code, also applies to a rule which "proposes to regulate an activity not regulated by the federal government." This rule amends portions of the Ground Water Quality Rule that address mining activities. Mining activities are regulated by the federal government. The federal government, however, does not have a regulatory program that specifically sets standards to protect ground water quality and beneficial uses of ground water as the Ground Water Quality Rule does. For this reason, DEQ believes Section 39-107D is applicable and that the amendments to the rule describe aspects of mining activities not regulated by the federal government.

The proposed rule changes were initiated for clarification purposes rather than for reasons based on new scientific information. By clarifying the language in the Ground Water Quality Rule, DEQ is facilitating more efficient implementation of the Ground Water Quality Plan and the Ground Water Quality Rule thereby reducing the economic burden on the regulated community. Improved rules also allow the public to better understand the requirements imposed on the regulated community to protect human health and the environment. Thus, the changes to the rule describe an administrative process to determine the application of the Ground Water Quality Rule to mining activities. The administrative process requires the application of sound science and identifies the scientific factors that must be considered and analyzed by mining companies and DEQ when making decisions. This administrative process is not itself based upon any analysis of risk to specific populations or receptors, but rather sets out a process by which the risk to human health and the environment will be evaluated by DEQ as it reviews a specific mining site.

DEQ has relied upon its experience, the experience of federal agencies, input from mining companies and input from environmental organizations in drafting the proposed changes to the rule. **Senator Hammond** inquired if the water used by a mining operation and returned to flow downstream and into the ground have to be as pure as it was before it was used for the mining purpose? **Mr. Burnell** answered if within the mining area there are naturally occurring contaminants standards do not need to be met. **Senator Hammond** asked if the point of compliance is anything beyond that? **Mr. Burnell** responded the point of compliance would be outside the mining area. **Senator LeFavour** asked if the mine owner is allowed to choose the point of compliance. **Mr. Burnell** replied the agency sets the point of compliance and the information presented to the agency by the mine operator would be the specific geology, hydro-

geology, the plan of mine operations and their reclamation plan could determine the point as close as possible to the boundary of the mining area where compliance would need to be met.

Senator Bock asked, "What kind of monitoring activities will occur within and outside the exempted area and who is responsible for the monitoring?" **Mr. Burnell** responded there can be monitoring within the mining area to validate groundwater models that may have been used to establish where the points of compliance are. All monitoring is conducted by the mining operation or their consultants. The boundary of the mining area would determine the point of compliance and that is where the monitoring wells would be set. **Senator Bock** asked, "What monitoring would DEQ be doing in that area?" **Mr. Burnell** stated the agency has the authority to collect samples, however typically we are reliant on the mining company to collect the samples, analyze them and report to the agency. **Senator Bock** asked if it is the agencies discretion, what would trigger exercising your authority? **Mr. Burnell** replied if the agency witnessed an adverse trend or new hydro-geologic information became available the agency would request additional monitoring from the mining operation.

Justin Hayes, Program Director, Idaho Conservation League, (ICL), testified in opposition to this rule.

Former **Representative Tippetts**, representing Agrium, testified in support of this rule.

Jack Lyman, Idaho Mining Association, testified in support of this rule. **Vice Chair Broadsword** stated she understood bonding was discussed during the rulemaking and asked for clarification. **Mr. Lyman** responded there was an issue discussed during the rulemaking and stated it was their view the Department at this time does not have the statutory authority to require a bond and thought a bond in this rulemaking went beyond the scope of the groundwater plan.

Senator Coiner asked if the water starts migrating outside of the mining area, what is the proposed mitigation? **Mr. Lyman** responded it will vary situation to situation and it will vary depending on the constituent that has become elevated. **Senator Darrington** asked **Mr. Burnell** to verify **Mr. Lyman's** statement regarding bonding. **Mr. Burnell** responded statutory authority is an issue the Department needs to explore and would defer to the Attorney General Office.

Senator LeFavour asked if there was any precedence in rulemaking where we pick and choose where to enforce our groundwater quality laws. **Mr. Burnell** responded the current rule has a mineral extraction section that is the basis for the agencies actions in working with mining owners which indicates naturally occurring constituents found in groundwater within a specified area surrounding an active mineral extraction area, as defined by the department, will not be considered contaminants as long as the applicable best measure of practices, best available methods or best practicable methods, as approved by the department, are applied.

Senator LeFavour stated, once the contaminants are in the groundwater, different laws are applied and that is something not requested before. **Mr. Burnell** stated when the department looks at the application of the solid waste rules they set the vertical boundary which is the point of compliance. There is a thirty year process that owners of solid waste facilities have and they manage their landfill. There is a comparison here, the point of compliance is the vertical point outside of the landfill itself where you must meet the groundwater quality rules. **Senator LeFavour** stated, that is for thirty years and not indefinitely. **Mr. Burnell** replied the owner of the property still has responsibility. The folks that have used it to intern waste may come and go but the property owners still have responsibility.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 9).

MOTION

Senator Lodge moved to approve Docket 58-0111-0801. The motion was seconded by **Senator Darrington**. **Senator LeFavour** requested a roll call vote. **Vice Chair Broadsword** asked the secretary to call the roll. **Senators Lodge, Broadsword, Darrington, McGee, Coiner, Hammond, Smyser** voter aye. **Senators Le Favour and Bock** voted nay. The motion carried.

58-0103-0801

Relating to Individual/Subsurface Sewage Disposal Rules (Rulemaking to provide for a revised method to estimate wastewater flow from single family dwellings) (Pending)

Barry Burnell, Administrator, Water Quality Control, Department of Environmental Quality (DEQ), stated the purpose of this rulemaking is to provide for a revised method to estimate wastewater flow from single family dwellings that is more consistent with domestic water usage statewide. The proposed revisions would provide for a more refined soil classification system which will allow more precise sizing of drain fields. The rule would also provide a definition of bedroom and module to assist understanding and applicability of the rule within the regulated community. The proposed rule includes the addition for the terms bedroom and module; Revises the wastewater flow rates for single family dwellings; Refines the soil classification system from 3 to 6 soil types; and Revises the maximum total square feet of trench. In order to be in balance with the increased wastewater flow rates, it is necessary to increase the maximum allowable size for a standard drainfield.

Public comments were received and the proposed rule has been revised. DEQ recommends that the Board adopt the rule, as presented in the final proposal, as a pending rule with a final effective date of July 1, 2009. The rule is subject to review by the Legislature before becoming final and effective.

Senator Darrington asked if an average home has two sets of drainfields, is it equal to this regulation? **Mr. Burnell** replied two systems or more would be adequate if they meet the minimum standard. The

approach is to address the wastewater flow generated by the structure. **Senator McGee** asked, "Why are dens, studies, office, library, sewing and craft rooms categorized as bedrooms in this rule?" **Mr. Burnell** replied just because the rooms are listed as dens etc. it does not prevent people from using them as bedrooms. As long as those rooms can afford privacy those rooms can be used as a bedroom. **Senator McGee** asked, What about a really big closet? **Mr. Burnell** replied as long as the closet does not have egress or ingress and meets certain criteria it will not be defined as a bedroom. **Senator Coiner** commented many letters received stated this rule will preclude current lot owners from building due to the demands in this rule. The rule lists alternatives, are any of the alternatives less than what is in the current rule? **Mr. Burnell** replied the alternative expressed in the table exist in the current technical guidance manual or current rule.

Shawn Gavin testified on behalf of himself, Mt. View Construction and other general contractors and provided written testimony in opposition of this proposed rule. (Attachment T-1) **Senator LeFavour** stated it sounds like Mr. Gavin is a responsible contractor and given it is possible that other contractors are not as responsible, is the contamination of the lake or stream water of concern to him? **Mr. Gavin** replied yes this is of concern to him.

Bill Johnson, Johnson Custom Homes, provided written testimony in opposition of this proposed rule. (Attachment T-2). **Dale Peck** testified on behalf of the Idaho Association of Public Health District Directors and provided written testimony in support of this rule. (Attachment T-3) **Vice Chair Broadsword** asked Mr. Peck if statistics are available for failed systems. **Mr. Peck** replied the Health Districts have not captured that data in the past, however, they began collecting this information in January 2009. Information is available for repair permits issued but permits are not specific to why the repair is necessary. **Vice Chair Broadsword** asked, "If the data doesn't exist, how can the conclusion be the systems are undersized?" **Mr. Peck** responded the basis for the rule change is not predicated on the number of failures it is based on increased flows entering the drainfields.

Senator Darrington asked if data is not available to support inadequacies in the present standard what is the reason to increase the standard? **Mr. Peck** stated the analogy used is, design a million gallon wastewater treatment system for a City with an expected discharge that includes a certain level of treatment and you push through a million and a half gallons, the treatment will be inadequate. This analogy applies to an onsite system.

Senator LeFavour asked, "If systems are failing and polluting lakes and streams what is the contaminant and what is the risk to public health?" **Mr. Peck** stated the primary indicators in groundwater contaminants are nitrates which will be seen before issues of bacteria or other contaminants. Efforts have been taken to remove onsite systems and transfer them to septic systems. A change in the density of the drainfields have brought water quality back to a positive standard and the standard

has been maintained.

Senator Lodge inquired if the Public Health District had suggestions for septic system maintenance. **Mr. Peck** stated a brochure that provides maintenance information is available to the public and is attached to all new permits. **Senator Lodge** said does the general public receive information regarding septic maintenance. **Mr. Peck** responded the District tries to disseminate this information. The District's primary objective and task under the rule is to issue permits for new systems not the operation and maintenance after installation. **Senator Hammond** questioned if the brochure for guidance was a new effort. **Mr. Peck** answered the information has always been available and as of two years ago the brochure has been attached to all new permits issued.

Allen Worst, RC Worst & Co., testified in opposition of this rule, however, he would be in favor of a proposal to increase flows to septic drainfields in Idaho if such a proposal contained specific data that identifies failed drainfields in Idaho and, that failed drainfields are attributed to subsurface disposal systems that are organically and hydraulically overloaded. Future studies would have to rule out inevitable failure due to age, antiquated wastewater disposal techniques, improper siting, improper classification, substandard installation and improper system maintenance. A study must emphatically identify inadequately applied flows as the primary cause of failure. Mr. Worst stated as a participant in part of the negotiated rulemaking process, the proponents of this proposed rule change have failed to identify and support drainfield failure as a problem in Idaho and is lacking the necessary link between the failed drainfields and current flow calculation criteria. **Senator Hammond** asked if alternative systems are more expensive to maintain. **Mr. Worst** replied alternative systems vary from no additional maintenance cost to a dramatic increase in maintenance costs.

Justin Hayes, Idaho Conservation League testified in support of this rule.

John Corcoran, Coeur d'Alene Association of Realtors testified in opposition of this rule and stated the real-estate and development community has long stated the problem can be shown to exist and will work with DEQ to resolve issues. At the core of this issue is the rights to property issue pertaining to the inability to build. **Senator Darrington** inquired if the Association attended the public meeting held for this rule. **Mr. Corcoran** replied he and the Executive Director were leads in the negotiations.

John Eaton, Idaho Association of Realtors, testified the Association has been involved in this issue for a long time and cannot support this rule. **Vice Chair Broadsword** said realtors obviously do not want systems to fail, especially lakeside property, because they are not going to be able to sell the property next door. **Mr. Eaton** replied realtors are certainly concerned about the quality of life and any environmental damage that could be done with the existing rules, however, we have not seen data that shows why some systems are failing. **Senator LeFavour** said is it possible people have been building larger houses than what would be

typically sized to a drainfield. **Mr. Eaton** stated, "We don't know. There is no data that indicates that. It is absolutely possible but we don't know for sure. What we do know is the majority of these systems that fail are more than 25 years old and have had inadequate maintenance. That's the only data we have."

Mary McMillen, Dan Bosworth, and Todd Gordon provided oral testimony in opposition of this proposed rule.

Mr. Burnell, in closing, stated this rule is about properly designed systems and the charge that we gave the committee is the fundamental for that. We want to make sure that when a property is developed and sold, that you are getting a drainfield that is properly sized. You do not want to have a drainfield that's undersized because those are the ones that will fail and fail prematurely. The data that Central District Health developed previously the 0 to 8 year old category would be premature failures that are likely caused by overloading your drain field. So if you are looking for numbers, I would look at that number as the basis. When an individual has a failed drainfield and the site is evaluated, more often than not there is not a way to measure the amount of water being used because individual wells are not metered. Most of these properties have individual wells. The only way to measure usage is to retrofit and install a meter. This is an additional expense that the Health Districts and DEQ don't recommend that we put individual failed systems through. The point is that type of data is impossible to obtain so we are left with flow data as our basis for design. The rule presented before you today is to address design related issues. Most of the testimony you have heard today is about setbacks and those are problems that exist today and will tomorrow with this current rule. This rule does not propose to reduce the setback from a well to a septic tank or well to a drain field.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 10, T-1, T-2, T-3).

MOTION

Senator Coiner moved to hold Docket 58-0103-0801 in committee subject to the call of the Chair. The motion was seconded by **Senator Bock**. **Senator Coiner** commented he would like more information from DEQ regarding setbacks, the cost of alternatives and what are the options. **Senator LeFavour** commented this motion should be time certain. It would give DEQ and others a date by which we would like additional information. What is the cost of cleanups for these failed systems? If this issue isn't addressed what is the anticipated cost to the taxpayers? This rule is largely focused on the issue of are we counting bedrooms correctly and is that creating an undersized septic plan for each property. When does a city or an area decide that it needs a sewer? In many of these cases there are not going to be solutions even within the current law for some of these lots.

Senator Hammond commented he received several calls from some very credible people that have been in his community the thirty five years that

he has been there. These folks have been leaders in the community, they are not contractors and they are not builders except for one and he is known for building green construction homes so he is very much into environmental construction. They all expressed apprehension and asked me to oppose this rule. He has great respect for Dale and for the Panhandle health district and for DEQ and their efforts on this rule but it needs to be in the oven longer. More work needs to be done with the community that's involved. Look at the time these folks took to come all the way down here to testify on this and Mr. Worst has something to gain by installing larger systems and yet he is saying we need to hold off here. The committee can hold this rule for a while but when it comes forward he will not support it because more work needs to take place between the citizens of the greater community and the rulemakers.

SUBSTITUTE MOTION

Senator McGee moved to make a substitute motion to reject the rule. The substitute motion was seconded by **Senator Hammond**.

Senator McGee commented that he agreed with Senator Coiner and Senator Hammond and to let the record reflect that he also agreed with Senator LeFavour . There are so many question marks about the rule. The testimony heard in support of this rule are from the same region of the state. If this is a statewide issue we are trying to solve why weren't more people from around the state telling us it is a problem. There are so many questions remaining that I can't support the original motion and I am going to obviously support my substitute motion. **Senator LeFavour** stated DEQ has looked at best practices for the size of the house, the amount of outflow and the size of the drainfield and they fixed it in this rule. It's understood it has a disproportionate impact to people living at lakes edge. She said, "It clearly does and I don't question its heart wrenching for those individuals. We really do have an obligation as legislators to watch out for and protect the water quality of the state of Idaho. We have a very clear duty in that respect and we have to be aware of the cost to taxpayers if we fail. The cost of clean up in this case would be substantial and even more substantial to the individuals who may have to put in these fields."

Vice Chair Broadsword called for a vote on the substitute motion. **Senator LeFavour** requested a roll call vote. **Vice Chair Broadsword** asked the secretary to call the roll. **Senators Lodge, Broadsword, Darrington, McGee, Coiner, Hammond, Smyser** voted aye. **Senators Bock and LeFavour** voted nay. **The motion to reject the rule carried.**

MINORITY REPORT

Senators LeFavour and Bock submitted a minority report dissenting to the recommendations of the Committee for Docket [58-0103-0801](#) and Docket [58-0111-0801](#).

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

attachment 1 and 12).

ADJOURNMENT Vice Chair Broadsword adjourned the meeting at 6:02 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: January 29, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed participants. **Chairman Lodge** turned the meeting over to **Vice Chair Broadword** to begin presentation of the rules.

41-0101-0801 Relating to Rules of Public Health District #1 (Pending)

Dale Peck, Environmental Response and Technology Director, Panhandle Health District (PHD) serving the counties of Boundary, Bonner, Kootenai, Shoshone, and Benewah, on behalf of District Director Jeanne Bock and the Board of Health, stated *Idaho Code 39-416* authorizes Health Districts to adopt rules for the protection of public health within the district. Mr. Peck asked the committee to favorably endorse a change in the rules governing environmental health programs affecting the five northern counties of Idaho. IDAPA 41.01.01 provides for additional rules deemed necessary by the Panhandle Health District Board of Health to protect public health within the district. This IDAPA rule governs only the environmental program in northern Idaho and not the rest of the state.

This pending rule was negotiated to address concerns from the development community that the current version of the rule, adopted in 2007, restricted the development and sale of some properties. The current rule only allows for application for a septic permit to be accepted concurrent with a request for a permit to construct the structure to be served by the septic system. In other words, we would only permit installation of a septic system when the dwelling being served is ready to be constructed.

The negotiated change would allow the installation of a septic system

without a permit to construct and would allow subsequent connection and use of the installed septic system under the conditions of the original permit for up to five years. The change would allow "speculative drainfields" to be installed to enhance the value of property for sale. Panhandle Health District submits this compromise that we feel both provides for protection of public health without unduly restricting development.

The pending rule was reviewed by Deputy Attorney General, Douglas Conde and the Board of Health and Welfare. Both found that the pending rule would not conflict with Idaho Department of Environmental Quality (IDEQ) laws and rules governing onsite sewage disposal. PHD held a public hearing and received no comments. This rule change was written in conjunction with members of the real estate and development community. It was a compromise reached with the development community as part of the 2007 PHD Negotiated Rule Making that included a proposed increase in the septic design flows that is now part of IDEQ Docket 58-0103-0801 as a proposed statewide rule change.

Senator Darrington commented it appeared this change provided more flexibility to contractors. **Mr. Peck** responded this is correct and it does allow the system to be installed in advance of construction. **Senator Hammond** questioned if the permit is issued, does the septic system have to be constructed right away or can it be installed anytime within the five years the permit is valid? **Mr. Peck** replied the septic system would be installed under the current regulation which is one year after issuance of the permit and would allow five years for the construction of the building and connection to the system. **Senator Bock** asked how do you relate what was installed to the actual size and configuration of the house? **Mr. Peck** replied the conditions of the original permit would apply.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Senator Darrington moved to approve Docket 41-0101-0801. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

**16-0309-0803
and 16-0310-
0803**

Relating to Medicaid Basic Plan Benefits (Pending)
Relating to Enhanced Plan Benefits (Pending)

Pat Guidry, Program Manager, Office of Mental Health and Substance Abuse, Division of Medicaid presented to the committee Docket 16-0309-0803 Medicaid basic plan and companion Docket 16-0310-0803 enhanced plan benefit. Ms. Guidry stated these rules support the reform of the Medicaid mental health program and are proposed with an implementation date of Sine Die. Following the direction of 2006 House HCR48 the Department has explored modifications of mental health

benefits and has embarked upon year one of a three-year planning process to incorporate best clinical practices and enhancements that support the matching of mental health benefits to participants' needs through a phased systems improvement approach ensuring that the resources are directed to those individuals who most need Medicaid mental health services.

This docket is by no means intended to represent all the reforms that are needed. The WICHE group reviewed the docket and advised us that it is a good interim step for the State to make in terms of mental health policy development.

Medicaid has worked with a group of 26 diverse stakeholders on this reform project. After the initial publication of this docket on October 3rd, Medicaid received 369 distinct comments from the public, representing 83 different opinions. We are pleased to report that we incorporated every single comment we received to the extent that the resulting change was within the parameters of our reform mandate which was to be cost-neutral, and promote effectiveness and efficiency. It is important to realize that these rules effectively close many of the loopholes from the current rules that allowed departure from best practice and increased the department's costs. These rules contain professional and safety requirements that for some providers will represent new costs if they are not already consistently operating at a clinically sound, safe and ethical level. At the same time we've incorporated opportunities for cost-savings to providers.

Among the supporters of this docket, we can list the State Planning Council on Mental Health, the Idaho Chapter of the National Association of Social Workers, members of the Idaho chapter of NAMI, the State Social Work Licensing Board, the Office of Consumer and Family Affairs, and the State Independent Living Council. The applicable boards of the Bureau of Occupational Licensing assisted in developing some of the language in this rule. The national NAMI organization offered a letter of support with three additional provisions and we incorporated all three of their suggestions. I don't want to mischaracterize these organizations' support of the docket. In the final analysis, while they were able to extend their support, all of these organizations expressed disappointment that we were not able to incorporate financial incentives to providers, revise the entire infrastructure of the mental health system or add new evidence-based programs this year. My understanding is that you have been contacted by several of the stakeholders who have worked with us in support of this docket who could not be here today to testify in person.

Vice Chair Broadsword asked if changes are due to federal requirements? **Ms. Guidry** responded not all changes are directly linked to federal requirements. **Vice Chair Broadsword** asked is there a penalty if the changes that are linked to federal requirements are not made? **Ms. Guidry** stated if we were out of compliance there would be a penalty. **Senator LeFavour** inquired if which changes are necessary for federal compliance. **Ms. Guidry** replied the change in definition for the

service of collateral contact is now written truer to the definition of the service according to the code for procedural terminology manual. The way this service has been defined in this rule has allowed for a broader scope of activity than is intended for service. **Senator LeFavour** queried is there only one thing that has been changed to meet federal compliance and it's this one definition? **Ms. Guidry** responded this is the one change that is explicit as written in the CPTP manual. The other standards that have been written are consistent with best practice which are also a requirement of the federal government. The federal government doesn't publish a regulation that pertains specifically to some of the elements we have in here.

Senator Bock queried what will be done differently if we adopt this rule? **Ms. Guidry** replied a significant part of the changes clarify the requirement for a diagnostic work-up of individuals in order for them to get services that match their health care needs. The requirements of rule that relate directly to operationalize our management of the benefit have been changed. Presently there is staff that work 40 hours per week authorizing services, following up complaints of abuse, and misinterpretation of the rules. Through these rules we are clarifying many of those requirements and allowing the opportunity for reduction in administrative processes that were not leading to good results and were essentially a paper process that wasn't directly connected to the outcomes or providing effective services.

Senator Bock stated he was still having trouble understanding what would be done differently. **Ms. Guidry** replied quality assurance reviews of medical records have been conducted that are related to the rules as they currently are. What was discovered is upwards of eighty to ninety percent of the way the services are delivered are not following the rules due to loopholes in the rule. Individuals are receiving services that do not match the health care needs. Staff spends time compiling data and working with providers in a feed method of communication to reinterpret and clarify for them what is required. Often when we go to hearings on these cases the push back received is the rule does not explicitly state the standard and safety measure. There is no way to enforce the requirements that are meant for higher standards of care that are consistent with best practices.

Senator Bock asked if the objections received for the draft amendment to the rule were because they were not strict enough? **Ms. Guidry** replied they did receive comments to that effect. The eighty six different opinions had to do with clarifying the language and scope of the rule. All comments that were consistent with best practice, efficiency and safety were incorporated. There was one comment, out of the three hundred received, that made a suggestion that was against federal requirements and we could not use it in the modification.

Vice Chairman Broadword asked Ms. Guidry to present the next rule so members of the audience that had signed up to testify could testify once to both rules.

16-0310-0803

Mr. Guidry stated the subject matter in this docket covers the same subject matter as in the docket just discussed. Additionally, there are components that speak directly to those differences that represent the higher level of care that is provided for in the enhanced plan such as the Psycho-Social Rehabilitation (PSR) specialist requirements. PSR specialists do not deliver services in the basic plan so they are not mentioned in chapter 9. There is also language that goes to greater detail describing standards for the enhanced plan services. **Vice Chair Broadsword** asked if this docket is the department's intent to improve services and quality of managed access with some cost containment. **Ms. Guidry** replied there are outcomes associated with these changes that we do expect will result in greater efficiencies and effectiveness of services.

Senator LeFavour commented that Ms. Guidry said eighty to ninety percent of what is being put into these case plans is inappropriate, how is that determined if you are only looking at files. **Ms. Guidry** replied they believe the reason for failure of the assessments that are received and the treatment plans to be in compliance with the rule and to be effective is because so many of them are produced by individuals that may not be trained and are not certified mental health professionals. **Senator LeFavour** inquired how are they inappropriate. **Ms. Guidry** responded a typical representation that they see is a treatment plan that is designed around a participant spending time with their worker who is not a certified professional. There is no information to substantiate in the medical record how spending time with that person is going to have an impact on the participant. If a person is trained in mental health and licensed or certified, the expectation is they have the clinical knowledge and have a clinical intent so spending time with that person is not just spending time, it's a therapeutic interaction with a positive outcome for the participant. Those expectations that do not get fulfilled we find when we do the reviews of these cases and we see that the person that has been spending the time with the participant has not been able to identify or document a therapeutic goal associated with spending that time.

Senator LeFavour asked if it was possible the person writing the plan isn't the person implementing the plan. She said therapeutic steps may involve certain types of socialization and the worker knows what the goal of the socialization is but might not know what the overall goals are and may not have the treatment plan in hand. **Ms. Guidry** replied part of what was described is a legitimate service for a person who has symptoms of mental illness, however, that would not be a medical service, it would be more of a support service, a companion service and that is what we have found when we have done our reviews. Also, part of the problem that was discovered is that these individuals who are spending the time with the participant may not understand therapeutic goals or understand what the goals are that would be appropriate for the participant and may not be familiar with the treatment plan. It is possible that one person writes the plan and another person spends time with the participant. In our reviews when this is uncovered it is associated with situations in which we have documented the failure to comply with the rules and failure to follow the best practices.

Nikki Smith provided written testimony in opposition of Docket 16-0310-0803. (Attachment 3)

Kelly Buckland, Director, Idaho State Independent Living Council, stated the Council is made up of 22 members appointed by the Governor. It is composed mostly of people with disabilities and a broad range of people with disabilities including people with mental illness. We have had some involvement in the development of this rule. I first of all want to clarify what our position is and because it has been stated that we were involved in the rule, I think it is necessary for us to clarify this. Because these two rules are now linked together, we cannot support the rule because it places in rule, caps, on services that people can access. Particularly the PSR stuff. We are opposing that because those people have no access to community based services that will help them stay in the community. They will go into more restrictive environments like prison, county jails and state hospitals. WHICHE report is commissioned by the Legislature and has expressed to the Legislature that we are already over dependent on State hospitals and prisons to treat people with mental illness. That is becoming the treatment modality of the fault because that's where people have access. By placing further caps on mental health services in the community, we believe it will result in them going into more expensive and more restrictive environments and so we have to oppose this rule.

Vice Chair Broadsword inquired where in the docket does it discuss a cap on services. **Mr. Buckland** responded he knew it took the cap on PSR from 20 hours down to five. **Mr. Leary** responded page 342 and the cap change is ten hours. **Vice Chair Broadsword** commented it states, in 05, services are limited to five hours weekly and up to five hours additional with prior authorization and is that the ten hours that he referred to? **Mr. Leary** responded yes. **Vice Chair Broadsword** asked if crisis intervention services are reduced from 20 hours to 10 hours per week. **Mr. Leary** responded yes they are.

Greg Dickerson, Legislative Chairman, Mental Health Providers Association of Idaho stated his association supports many of the revised rules in this docket and many of the reform elements of the Medicaid Mental Health reform effort. However, there are areas of unresolved concern in these two related dockets. (Attachment 4, 4a).

Kelly Keele provided written testimony in opposition of these two rules. (Attachments 5, 5a, 5b, 5c).

Matthew Smith, CEO, Family Treatment Center, provided written testimony in opposition of these rule changes. (Attachment 6).

Shawn Thurber, Marriage and Family Therapist, Idaho Falls, provided written testimony in support of these rule changes. (Attachment 7).

April Crandall, Mental Health Providers Association of Idaho, Legislative Committee, provided written testimony in opposition of these rule changes. (Attachments *, 8A, 8B, 8C).

Ms. Guidry stated in closing that these rules were reviewed by the Attorney Generals office and no contradictions were found. The Department will work, in a training capacity, with the provider community to clarify language changes in the rule. **Senator Smyser** commented it sounded like the changes have been accepted by the Attorney General and there are no discrepancies and the department will work with providers to help them to understand more.

Ms. Guidry replied it is the departments intent to continue with workgroups and expand the groups to other interested parties to work toward the reform measures that are planned for four years. It is a process that still has steps ahead of it. Part of it is the devolvement of new services that address the concerns we heard today.

Senator Smyser queried what is the timeline for this. **Ms. Guidry** replied presently the project timeline has two additional years. **Senator Smyser** asked if these would not be enforced until that time. **Ms. Guidry** responded these changes go into effect sine die. The Department will continue to work to refine them as the years go by. **Mr. Leary** commented as a point of clarification, you will see us in the next two sessions as we continue to refine our mental health rules.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachments 1,2,3,4,4A,5,5A,5B,5C,6,7,8A,8B,8C).

MOTION

Senator Bock moved to reject Dockets 16-0309-0803 and 16-0310-0803. The motion was seconded by **Senator Coiner**.

SUBSTITUTE MOTION

Senator McGee moved to approve Dockets 16-0309-0803 and 16-0310-0803. The motion was seconded by **Senator Darrington**.

Senator LeFavour stated by rejecting the rule the committee is sending a firm message to the agency.

Senator Coiner commented over the last five years we have moved mental health ahead in this State. By making some tough decisions, however, anything that cuts hours, availability is a cut that is wasted. A nickle won't be saved by cutting any of these services. It will cost the State far more than there is savings. More people will be seen in crisis, in our court system, and we will see more people in and out of hospitals. This is one area that should not be cut.

Senator McGee stated the Legislature is constitutionally mandated to balance the budget. It is difficult to cut programs to meet this mandate but it is the only thing that can be done to balance the State budget. These are difficult economic times.

**AMENDED
SUBSTITUTE
MOTION**

Senator Coiner moved to **table** Dockets 16-0309-0803 and 16-0310-0803 subject to the call of the Chair. The motion was seconded by **Senator LeFavour**. **The amended substitute motion to table carried by voice vote.**

ADJOURNMENT The meeting was adjourned at 4:40 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 2, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed participants. **Chairman Lodge** turned the meeting over to **Vice Chair Broadsword** to begin presentation of the rules.

03-0101-0801 Relating to Rules of the State Athletic Commission (Pending)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of the State Athletic Association, stated this rule has been adopted by the agency and is now pending review by the 2009 Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is rejected, amended or modified by concurrent resolution in accordance with *Section 67-5224 and 67-5291, Idaho Code*.

Changes to the rules are being made to set forth requirements for martial arts and mixed martial arts and to continue to outline standards for the safety of the combatants. The current rules pertain primarily to boxing and wrestling rather than martial arts and mixed martial arts. A change is being made to section 103 that will require blood test reports to be submitted with renewals as well as applications and allow the commissioner discretion with blood tests. A change is also being made to section 739.01 to correct the reference to 10 Point Must System.

The text of the pending rule has been amended in accordance with *Section 67-5227, Idaho Code*. The complete text of the proposed rule was published in the October 1, 2008 Idaho Administrative Bulletin, Vol. 08-10, pages 59 through 84. **Senator McGee** asked if these rule

changes were being made to include Mixed Martial Arts (MMA). Mr. Hales replied they are trying to generalize the rule to include MMA events. Certainly the rules concerning professional boxing or professional wrestling are different from professional MMA events. There was a need to provide objectivity as to what the rules of the game were.

MOTION

Senator McGee moved to approve Docket 03-0101-0801. The motion was seconded by **Senator Darrington**. **The motion carried by voice vote.**

24-1501-1801

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

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists, stated the 2008 Legislature approved HB376 which creates a status for associate marriage and family therapists. A \$75 application fee and a \$75 original license fee are being added to the fee schedule to comply with the law which went into effect July 1, 2008. The fee is authorized in *Section 54-3411, Idaho Code*.

The 2008 Legislature approved HB376 which establishes an associate marriage and family therapist license. Rules 230 and 232 are new sections outlining the qualifications and limits on practice. Rule 240 adds language for the examination requirement. Rule 245 adds associate marriage and family therapist (AMFT) Licensure to the section for interns. Rule 250 adds the AMFT application and Licensure fees to the fee schedule. Finally, Rule 425 adds the requirement for continuing education for this new license. This license will be held while gaining the supervised work experience required for the marriage and family therapist license.

MOTION

Senator LeFavour moved to approve Docket 24-1501-0801. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

24-1601-0801

Relating to Rules of the State Board of Dentistry (Pending Fee)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of The State Board of Dentistry, stated this change will increase the annual renewal fee from \$450 to \$600 for the 31 licensees. The statute caps the annual renewal fee at \$600. The Board of Dentistry operates on fees paid by its licensees. The Board's expenses have been exceeding its revenues by about \$5,000 per year. This increase will help balance the

Board's annual budget. The fee is authorized pursuant to *Section 54-3312, Idaho Code*. This fee would have a positive impact on dedicated funds of approximately \$4,650 based on thirty-one licensees.

MOTION **Senator Hammond** moved to approve Docket 24-1601-0801. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

24-1301-0801 Relating to Rules of the Physical Therapy Licensure Board (Pending Fee)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of the Physical Therapy Licensure Board, stated this rule provides for a decrease in fees. This change will reduce the license and annual renewal fee for Physical Therapist from \$65 to \$40 and Physical Therapist Assistant from \$45 to \$35. It will also reduce the reinstatement fee from \$35 to \$25 which is the set amount for the majority of our boards. The Board of Physical Therapy operates on fees paid by its licensees. This change would decrease the initial license fee, renewal fee, and reinstatement fee in an attempt to reduce the Board's cash balance. This fee change would reduce the cash balance in dedicated funds for this Board by approximately \$32,000 per year based on 1518 licensees.

MOTION **Senator Bock** moved to approve Docket 24-1301-0801. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

24-1101-0801 Relating to Rules of the State Board of Podiatry (Pending Fee)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of The State Board of Podiatry, stated this pending rule is being adopted as proposed. This change will increase the original license fee and annual renewal fee from \$300 to \$400 for the 75 licensees and approximately five new licenses per year. The statute caps annual renewal fees at \$400. This fee would have a positive impact on dedicated funds of approximately \$8,000 based on 75 licensees and approximately five original licenses per year.

MOTION **Senator Coiner** moved to approve Docket 24-1101-0801. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

24-1201-0801 Relating to Rules of the Idaho State Board of Psychologist Examiners (Pending)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of The Board of Psychologist Examiners, stated changes are being made to the rules in Sections 100, 125, 200, 260, 350, 401, 450, 500, and 600. These changes establish a deadline for applications and responsibility for updating files. They also clarify who sets the time and date of exams. These changes will help avoid confusion and also bring rules up to date. Changes are being made to senior psychologist qualifications to coincide with the law. The change to the code of ethics is being made since these are now available on the website. The continuing education rule is being changed to include four hours of ethics in a three-year cycle. Language is being corrected and clarified in 450 to avoid confusion. The changes to the educational requirements are to bring the rules more in line with the American Psychology Association (APA) standards. The psychologist in training and psychologist under supervision rules are being clarified. Finally, a rule is being added for a guideline in employment of unlicensed individuals.

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

Senator Hammond moved to approve Docket 24-1201-0801. The motion was seconded by **Senator LaFavour**. **The motion carried by voice vote.**

24-1901-0801

Relating to Rules of the Board of Examiners of Residential Care Facility Administrators (Pending Rule)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of The Board of Examiners of Residential Care Facility Administrators, stated the 2008 legislature approved HB492 which was brought by the Idaho Health Care Association. Rule 300 reflects this law change and allows the Board to approve exams other than the National Association of Board of Examiners of Long Term Care Administrators (NAB) exam. It also addresses that an open book exam to test Idaho law and rules, in accordance with current law, will be given. Finally, it updates the reference to the association under Rule 400. IDALA no longer exists and IHCA/ICAL has taken its place.

MOTION

Chairman Lodge moved to approve Docket 24-1901-0801. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

24-1401-0801

Relating to Rules of the State Board of Social Work Examiners (Pending Fee)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of The State Board of Social Work Examiners, stated section 225 adds an inactive status as allowed by passage of HB361 in the 2008 session. Section 300 increases fees for application, original license, and renewal fees by \$10; increases an endorsement fee by \$5; and finally, establishes renewal fees for inactive status for Licensed Social Workers and Licensed Masters Social Worker at \$30 and Licensed Clinical Social Worker at \$35. This fee would have a positive impact on dedicated funds of approximately \$33,970 based on 2,997 licensees and approximately 400 applications per year. The Fiscal impact to dedicated funds for inactive status would be dependant on how many people choose an inactive status over an active license or over not renewing a license.

MOTION

Senator McGee moved to approve Docket 24-1401-0801. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

24-0501-0801

Relating to Rules of the Board of Drinking Water and Wastewater Professionals (Pending)

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, and on behalf of The Board of Drinking Water and Wastewater Professionals, stated the Board is adding a section to allow for termination of applications that have lacked activity for one year. This will help reduce the number of files that need to be maintained. Changes are being made to the requirements section to clarify the examination for backflow assembly testers. The Board is establishing the very small water system exam requirements as an option for operator in training. Changes to the education and experience subsection for very small water system operators will establish the hours of experience and courses required. These changes clarify requirements and streamline the process. Due to the comment at a public hearing held November 10, 2008, the Board determined that a change would be necessary to allow chlorination courses to be considered to qualify for very small water system operator.

Barry Burnell, Water Quality Division Administrator, Idaho Department of Environmental Quality (DEQ), testified in favor of the rules. DEQ and the Idaho Bureau of Occupational Licenses (IBOL) work very closely together. DEQ determines system classification types and the Bureau of Occupational Licenses fulfills the Licensure side. Both Agencies worked with Rural Water to set the rules and felt a very barebones set of criteria had been found. The rules provide flexibility for the small system owners as the time frame can be compressed to get your license based on this rule rather than relying on a straight six months of experience. These provide added benefits to the very small water system owners and their

operators.

Vice Chairman Broadsword asked for the committees edification can you give us an idea of what DEQ rules say regarding larger systems operators and how many hours they have to train. **Mr. Burnell** replied our rules set the classification scheme. Basically, what technologies you use to treat the water or what kind of method is used to distribute the water. Both treatment and distribution methodologies establish the type and class of license. DEQ relies on the Drinking and Wastewater Board to set the minimum criteria for system Licensure. DEQ is a partner with the BOL and this is one component of the Agencies drinking water program of which we have primacy.

Virgil Leedy, Idaho Rural Water Association (RWA), testified he has been in the water profession for 21 years as a supervisor and as an operator and holds five different licenses in this field. Of concern in this rule is the number of hours required for the small water systems to qualify for a license. What we would like to see is the six months put back in and hours taken out. We oppose this rule the way it is written. We would like to see more consistency across the board as far as who is qualified to run those systems. This rule is great for very small systems that still fall under the DEQ 500 population determination.

These systems still have to do treatment and still have to meet those extra hours. These systems treat water as well as wastewater and are a one man show. We don't want it to be a cross over experience and want to be able to have these systems licensed in a reasonable amount of time. Some surrounding states have definitions for their certification and others have licensing requirements that indicate a year or months rather than hours.

Vice Chair Broadsword stated **Mr. Hales** testified six months computes to 800 hours. In your testimony you would rather go back to six months which is 800 hours than accept the new language of 100 hours of training. Is that correct? **Mr. Leedy** replied what RWA would like to see is six months of experience and not refer to any hours associated with the months worked.

Senator Darrington commented most people want fewer hours not more then asked, which water company do you represent? **Mr. Leedy** replied the Idaho Rural Water Association which represents small systems in the State of Idaho. **Senator Darrington** stated Mr. Leedy clarified that he presently did not run a system but worked for the small water systems and is asked is this the same small group that Mr. Hales testified approved this rule. **Mr. Leedy** replied this is the same association, however, during the meetings RWA was opposed to hours. It is not the 800 hours it's the months or a calendar year that we are looking at more so. Is that 100 hours in six months or is it more or less? Operators may only work 30 minutes a day to check these systems. Many of these operators have other jobs.

Senator Darrington asked if there was a desire by some to use the rules and get rules in place in such a way to limit entrance into the certified operator trade. **Mr. Leedy** replied this was not the case. What RWA was trying to do is make it easier for these systems to get licensed. There are small systems that can't make the 100 hours in twelve months. **Senator Darrington** asked if the Association agreed with the rules at the time of promulgation. **Mr. Leedy** responded the Association did not totally agree with the rules because of the 100 hours. We did ask the board if they would review what surrounding States required in relation to Idaho. **Senator Darrington** asked if Mr. Leedy wanted to testify RWA did not agree with the 100 hour rule. **Mr. Leedy** responded we did not.

Senator Hammond commented, rather than keeping track of hours, an Operator that cared for a system for six month whether it was 30 minutes, or an hour and a half a day would meet the experience requirement for licensing. **Mr. Leedy** responded the current rule is six months of experience and under the current rule that would qualify them to take the exam.

Senator Bock stated if an operator worked for six months, which is roughly equal to 180 days, and spent half an hour a day, that would be 90 hours. How are these hours recorded? Mr. Leedy replied it would be under the purview of IBOL or DEQ.

Senator LeFavour stated some water systems might only take two hours in six months if running properly. How many hours would you anticipate a person might perform to meet the requirement in six months? **Mr. Leedy** replied it could take more than a year to meet the 100 hour requirement.

Lynn Tominaga, Idaho Rural Water Association, stated since 1996 when Congress passed the Safe Drinking Water Act, which mandated testing for all drinking water systems in the State and required all public drinking water systems to have a licensed operator approved by the State. The Idaho Drinking Water Advisory Committee from 1997 through 1999 had problems trying to license all the public water systems in the State. Most of these systems had voluntary operators. To meet the mandate existing operators were required to enroll in classes and have hours of experience to qualify for a license. This became very controversial and to fit the rule, as a compromise, the State grand-fathered all existing operators in. It didn't matter what kind of education or experience. These operators were automatically licensed. All new applicants were required to meet the mandatory standards as provided in the Act.

In 2007 language was added to the rule specifying One year of experience is equivalent to one thousand six-hundred hours (1600). Subsequent informal discussions with the Board resulted in the Board agreeing too at least trying to address the 1600 hours as part of the issue as well as the small operator license. This change is before you today.

We would not be here today if that rule change for the 1600 hours had

been left the same as it was this time last year. It would have said 12 months of supervisory experience. The very small water system wouldn't need a hundred hours, they may only have 50 hours or 20 hours but they would be supervised. This only applies to new licensed operators. This does not apply to existing licensees.

Mr. Tominaga stated they sat down with the Board, the Board thought the 1600 hour was not an issue. During the public hearings most people did not have much of a problem with the small water system change because in comparison to the 800 hours, due to the change in the definition last year, made it almost impossible for a small water system to get a new person on board. More than half the people that testified at the hearings said 1600 hours is an issue. The Board responded they could not deal with that because they were only addressing small water systems.

Idaho Rural Water would like to see this rule rejected so we could sit down, take more of a holistic view of how to do proper licensing and work with DEQ and the IBOL Board to make sure that we can address these issues.

Senator Bock commented that it sounds like you are asking for an increase in hours. **Mr. Tominaga** responded this is the question we all want to have answered. What they are trying to do is say one size fits all. Every drinking water system out there is so varied and so different. For example, Roswell, Idaho has forty connections and should fit under the small drinking water system permit, it does not. It uses a chemical additive for treatment. Since the small water systems rule only applies to groundwater pumped and chlorinated, Roswell does not fit the definition. They automatically get bumped to a class 1, not a small drinking water system.

Vice Chair Broadsword stated her understanding is RWA would like to have both rules reviewed and revised. **Mr. Tominaga** responded yes. **Senator Bock** commented in section 300.02.b of the rule it states 'to qualify for a Very Small Water System license,' this is specific language and not a one size fits all qualification as stated. **Mr. Tominaga** replied the definition for Very Small Water system is serving 500 people or less. If more than 500 people are served, a class 1 license is required. There are instances where a small water system that serves less than 500 people will not meet the criteria because they have a mechanical process or an added chemical other than chlorine.

Bob Hansen, Idaho Bureau of Occupational Licenses, testified that the Board struggled with all of these rules. The intent was to make this process as simple as possible for every system, every operator, and still have some degree of confidence operators have the qualifications to not put public health and safety at risk. The only way we could do our licensing process and keep it fair to everyone was to tie it to specific hours. If we tied it to months or years, not knowing how long an individual works in that system, one person might receive a license with two hours

of experience and another person might receive a license with one thousand hours of experience. We didn't want it to be subjective. We wanted it to be the same for everyone so we could tie the criteria to an individual. To obtain a license individuals would have to have the same experience and schooling to meet the qualifications. The intent was to make things straight forward and simple.

Vice Chair Broadsword inquired if Mr. Hansen had heard from individuals regarding the one year equaling 1600 hours. **Mr. Hansen** replied some discussion had been heard regarding the 1600 hours, however, not as part of this issue. This issue addresses only the Very Small Water Systems. We have seen States that have requirements of 1600 hours, some at the Federal guidance level which is more than 2000 hours, and some that are less than 1600 hours. We tried to pick a number that was fair to everyone and would give us an objective to tie experience to. **Vice Chair Broadsword** commented, in a discussion she had with folks from Bonners Ferry, they expressed concern with the constrictions this rule had and that it was difficult for their people to acquire that many hours before qualifying for a license.

Vice Chair Broadsword encouraged Mr. Hansen to revisit this portion of the rule. **Mr. Hansen** replied they would like to do that. There are other considerations taken into account when these rules are reviewed. For example, individuals that are licensed in the State of Idaho now have reciprocity in other States. If a licensed operator decides to move to Washington or Utah, their license from Idaho is recognized.

Roger Hales, in closing, stated, "We are dealing with a license for an operator and with public health and safety issues. We are trying to balance those two issues recognizing the small systems need flexibility."

Mr. Hales said they met with Idaho Rural Water and started working through the issues. One was the 1600 hour issue and the other was the small system issue. Regarding the 1600 hour issue we wanted to followup with EPA to determine if we had discretion to do something other than a specific number of hours. Additionally, we wanted to research other States to determine how they defined this issue. We are still working on these Small Water System rules.

If you read the letter from IRWA provided, you will recognize that we worked jointly with the Association to craft a rule we thought would work and we thought they supported us so we moved forward.

Mr. Tominaga mentioned there was a lot of testimony generated and there was but it was after we had published that rule and the testimony and the hearings were in response to the small water system rules. It did not deal with the 1600 hours. We understood the concerns but we couldn't do anything at that point. We had a rule that we worked through in good faith.

There are a lot of small systems out there and we are trying to make sure the operator is competent.

We are still researching other States and we are about in the middle with 1600 hours. Wyoming, for example, views one year as 2080 hours. In South Dakota the requirement is 2000 hours, Massachusetts 2000 hours, Connecticut 1920 hours, Pennsylvania 1760 hours, Hawaii 1630 hours, New York 1600 hours, Idaho 1600 hours, Colorado 1040 hours, Maryland 500 hours. There are other States that indicate one year and have not specifically tried to define it. There are some States that indicate if you have been employed for a year, regardless of hours, you are good to go. Ultimately, the Board felt this was a benefit. The Board is still committed to working with the Association and other interested parties to address this 1600 hour issue. The Board believes this rule benefits the public and Small Water System owners.

Senator Lefavour asked if there were opportunities, for an individual in the supervised phase to work with another water system to garner more hours. Mr. Hales replied there are. It is experience in any water facility. **Senator Lefavour** asked if it was standard practice to have a form that tracks hours worked and is signed off by the supervisor. **Mr. Hales** replied that is part of the application process.

Vice Chair Broadsword said she heard Mr. Hales state that continuing classroom education count toward the 100 hours required. **Mr. Hales** replied, the two courses listed in the rule apply: 1) an approved six (6) hour water treatment or chlorination course; and 2) an approved six (6) hour water distribution course.

Senator Darrington inquired if an individual operates a very small system that serves a cul-de-sac of 20 houses, the operator fills in his own time, obtains the 100 hour requirement, who signs off on it, the homeowner's association? **Mr. Hales** replied all operators need to be supervised to meet the requirement. It would be the owner of the system that should provide some supervision. **Senator Darrington** stated the owners of the system are the homeowners who live in the cul-de-sac. **Mr. Leedy** responded DEQ licenses the system and at that time indicates a supervisor.

Senator LeFavour asked, "How many systems are there in the State?" **Mr. Burnell** replied the data base indicates there are between 740 and 750 small water systems in the State.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1, 2).

MOTION

Senator Coiner moved to approve Docket 24-0501-0801. The motion was seconded by **Senator LeFavour**. **Senator Bock** commented with the adoption of this rule we will have a rule that is better than what we had.

Senator McGee expressed he was sympathetic to Senator Tominaga's

issues with this rule. He knows that when the committee asks Mr. Hales to go back and work with these groups in the off season, he does it. To their credit, as Senator Darrington stated earlier, Mr. Hales and Ms. Cory have done a great job with these Agencies. He stated he has a great deal of confidence in these two individuals to go back and work with people like Senator Tominaga in the off season to see if they can't come up with a compromise. In the meantime, he will support the motion. He didn't see how the committee couldn't support the motion and instructed the IBOL and the DEQ to work with Senator Tominaga and his groups to see if they could find a reasonable compromise.

Senator Coiner commented when the committee is dealing with a lot of people in other areas, we would reject the rule just to hold everyone's feet to the fire. He didn't think that was necessary in this case. The IBOL and the DEQ have shown good faith and everybody will be better off if this rule passes than they would be if we waited to do something different. There is still opportunity to do something different during the course of this year.

Senator Darrington asked for unanimous consent that Senators Coiner and McGee's statements be made part of the written record of this committee, and that the comments that they made be the will of the committee.

The motion carried by voice vote.

Vice Chairman Broadsword thanked the participants and stated she appreciated the willingness for all entities to go back to the table to find a resolution.

Mr. Tominaga expressed appreciation to the committee for the direction and the inclusion of the comments in the written record and looks forward to working with the Boards to resolve outstanding issues.

ADJOURNMENT Chairman Lodge adjourned the meeting at 4:54 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 3, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed participants. **Chairman Lodge** turned the meeting over to **Vice Chair Broadsword** to begin presentation of the rules.

RULES

15-0202-0801 Relating to Vocational Rehabilitation Services (Pending)

Angela Jones, Administrator, Idaho Commission for the Blind and Visually Impaired, stated this rule is a change in certain rates and structure of the payment policy set forth at IDAPA 15.02.02.300. It is necessary to render it consistent with the increasing costs the Commission is facing in order to contribute financial assistance to clients for the following specific services: education expenses, books and supplies, transportation, and bioptics. The Commission proposes increasing the upper limits it will contribute to clients for eligible expenses.

Education expenses will be changed from a fixed fee to 90% of actual cost without exceeding Boise State University, Idaho State University, or the University of Idaho's actual fees.

Books and supplies will be changed from \$600 per federal fiscal year to the actual cost.

Transportation costs will be increased to \$200 per month within a 20-mile radius, and \$300 per month for a greater than 20 mile radius, of commuting miles from home.

Bioptics will increase from \$700 to \$900.

Currently these expenses are being paid by the Commission.

There are limits in our rules that set fees for education, books, tuition etc., to a dollar amount. We are revising this rule to show percentages rather than dollar amounts in an attempt to eliminate revisiting this issue on an annual basis as expenses increase. The increase for Bioptics are due to increased service expenses. In the current rule it requires special approval to cover the increases which slows the process. These expenses are currently covered. We are changing the law to expedite services.

Vice Chair Broadsword commented these are not State fund dollars they are federal-pass through dollars that the Commission receives to administer through the Agency for services. **Ms. Jones** replied that was correct.

These are all Federal Rehabilitation dollars that come into the State.

MOTION

Senator Hammond moved to approve Docket 15-0202-0801. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

16-0226-0801

Relating to Idaho Children's Special Health Program (Pending/Fee)
(Rule was held in Committee 01/26/09 to be reheard 02/03/09)

Dieuwke Spencer, Bureau Chief of Clinical and Preventive Services, Division of Health, stated the intent of this Rule is to assure legislative support as the Department moves to comply with current Rules that require adult clients to pay for Phenylketonuria (PKU) formula.

Current Rules allow adults to purchase PKU formula from the State at the States cost. Those rules were proposed in 1997 when the medical recommendation regarding the use of formula changed. Until that time it was thought adults didn't need to stay on the formula, however, in 1997 evidence on the effects of removing the formula suggested some negative impacts. The recommendation stands today, but evidence on the degree of harmful effects on adults who do not stay on the formula is still uncertain.

In 1997 the program and legislature allowed adults to buy the formula from the State at the State's cost. Today adults order formula, the Department bills them for the cost on a quarterly basis and they refuse to pay. This leaves the Department with an ever increasing debt. The current year estimate of program costs is at least \$139,000 and the 2009 budget is \$106,200. This Rule would require pre-payment instead of the current reimbursement approach and in so doing will allow the Department to reduce program costs by \$106,200 for fiscal year 2010 which is part of the Governor's budget hold back.

The major change being proposed is not a matter of benefit reduction, but

a matter of program compliance. We propose a requirement for client's to prepay the cost of their formula order instead of the current approach that is failing to collect the debt and leaving the State to pay the cost incurred by the adults. The requirement of pre-paying for formula, brings the delivery of the Adult PKU portion of the program into compliance with the Rules by requiring that clients pre-pay for formula they order through the State. This is not a request to decrease services, but rather allows the program to use better business practices to comply with the intent of the Rule as it was written in 1997.

As directed by Vice Chair Broadsword on January 26, the Department has contacted the Department of Insurance and they will work with legislators interested in mandating the coverage of medical foods and formulas by insurance companies in Idaho. Per Senator Broadsword's request, we have also found that one of the four companies through which the State purchases medical formulas for PKU will sell directly to clients at a cost that may be as little as half of what the State pays for the same product.

Chairman Lodge stated she understood from the testimony just heard there is a company that would be willing to sell formula to PKU clients at half the price they were selling to the State, was that correct? **Ms. Spencer** replied yes that was correct. Historically the formula company indicated they would not sell directly to the clients and preferred to go through the State program. In researching other companies we found a smaller supplier that would sell directly to the clients and the cost they quoted was lower than what we are paying. **Chairman Lodge** asked if the State could purchase from this company. **Ms. Spencer** replied the state already does, but at a higher cost. **Chairman Lodge** asked, "What is the average intake of protein grams per day?" **Ms. Spencer** replied the US recommended daily allowance of protein for an average adult is approximately 65 grams per day. **Chairman Lodge** queried, as a child grows into adulthood, is there a diet regime that could replace the formula? **Ms. Spencer** replied the critical time for PKU is the first eight years of life. As an individual matures the dependence and reliance on formula decreases.

Senator Hammond commented regarding the client profile report provided, does income have a connection to actual payment of product? **Ms. Spencer** replied this program is required in Rule to provide for all clients with PKU. **Senator Hammond** asked if the information is not relevant to payment of formula, why is it collected? **Ms. Spencer** responded this information is collected as a requirement of the Children's with Special Health Care Program (CSHP). Many of the individuals listed on the report have come up through that program. **Senator Hammond** commented it would seem reasonable this information is collected because it has some bearing on eligibility for reimbursement. If this is not the case, why is the information collected? **Ms. Spencer** reiterated it is a requirement of the CSPH.

Senator Hammond asked, "Is there some eligibility related to the income level?" **Ms. Spencer** replied no there is no requirement for eligibility for the adult PKU care program. **Senator Hammond** followed with, is there

an opportunity to refuse to provide formula if they refuse to provide the information? **Ms. Spencer** replied the way the Rule is currently written persons over the age of 18 can purchase formula from the CSHP at the CSHP cost. The piece that is missing is collection of payment.

Senator Lefavour commented there are people listed that are low income and are uninsured. Requesting payment up-front could pose a serious situation for them. This is cause for concern. **Jane Smith**, Administrator, Nutritional Health, Department of Health and Welfare, responded the intent was never to provide the benefit, it was to provide access to the formula.

Vice Chair Broadsword stated appreciation for the information provided to the Committee.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1, 2).

MOTION

Senator McGee moved to approve Docket 16-0226-0801. The motion was seconded by **Chairman Lodge**.

Senator McGee complimented the Department for an excellent job and thanked Senator Broadsword for encouraging the Department to find alternatives. He then said the Department has really gone the extra mile to try to find alternatives for the folks that require this formula.

Senator LeFavour stated she felt the Department could have been more creative. Although this request is not a small amount of money, it's a question of priorities. There are days hundreds of thousands of dollars are thrown around like there was no tomorrow. This morning for example we had two million dollars floating around and going off into some account for two years to be held until it was needed. When decisions affect a life so profoundly as this does, she said we could do a bit more. **Senator LeFavour** expressed appreciation to **Vice Chair Broadsword** and other members of the Legislature who have committed to work with insurance companies to provide coverage as this was a very important step. She then stated the rule could have done better. She will not support the motion.

The motion carried by voice vote.

Senator LeFavour and Bock voted nay.

27-0101-0801

Relating to the Rules of the Idaho Board of Pharmacy (Pending)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated

the first nine of the dockets listed on the agenda have no know controversial issues. To begin, rule 134 has two changes. The current rule requires eight hours of continuing education from the American Council of Pharmaceutical Education. This organization, while keeping the initials ACPE, changed their name to the Accreditation Council for Pharmacy Education. Approval of the pending changes to rule #134 would correct the organization's name.

ACPE also added a participant designation code as a suffix to their universal program number: P for pharmacists and T for technicians. Our current language would allow for a pharmacist to submit, for credit to the Board, a CE designed only for a technician. Approval of the pending changes to rule #134 would clarify that pharmacists must complete CE created for pharmacists and not technicians.

Rule #156 is entitled "pharmacies" has several pending changes, some "house keeping" in nature. The rule utilizes the titles "registered pharmacist manager" and "responsible pharmacist managers" for the pharmacist who is "responsible for the management" of a pharmacy.

These terms are seldom used again in the rules, while the term Pharmacist-in-charge (PIC) is widely used, including in statute. Approval of pending rule #156 would harmonize terms in our rules and statutes.

Another term that needs harmonized within our rules is the use of registered vs licensed. Approval of pending rule #156 would correct registered pharmacist to licensed pharmacist.

Current language lists the pharmacy employer as the party responsible for communicating employment changes to the Board. "Pharmacy employer" is not a defined term. Approval of pending rule #156 would clarify that the PIC is responsible for this reporting.

Current language requires that changes in pharmacist or intern/extern employment be reported to the Board. Approval of pending rule #156 would require changes in technician employment to be reported also. This is necessary to track in cases of diversion.

Current language contains a loop hole where a proprietor of a pharmacy would not have to name a PIC, and thus would not be subject to the required duties of a PIC. Approval of pending rule #156 would require a pharmacist owner to name himself, or another pharmacist, PIC. There are additional changes to rule #156 within docket #21-0101-0810.

The legislature approved changes in the 2007 Wholesale Drug Distribution Act last year. These issues also reside within our rules. Approval of pending rule #323 will harmonize our rules to last year's changes in statute, including: 1) Elimination of the requirement for a security bond or equivalent security and the fund that would house these; and 2) Amendments to disclosure requirements.

Rule 356 is entitled Veterinary Drug Orders (VDO) and rule #357 is entitled

Drug Orders. The Board of Pharmacy was approached by the Board of Veterinary Medicine, requesting changes to our rules. Our two Boards have worked together with input from Vets and Veterinary Drug Outlets to formulate these changes. The paralleling Board of Vet Medicine rules have been approved by the House last week

Vet Drug Outlets employ Vet Drug Technicians (VDT) to dispense vet Rx items pursuant to a Vet's prescription. Vets were reporting that VDTs were dispensing Rx items and then requesting prescriptions to cover this dispensing. Obviously, this practice was backwards, and not legal.

A Vet can write a prescription to be filled at a VDO on 3 part order forms. These official forms are numbered. The first pending change to rule #356 would clarify the numbered form is used for this written Rx.

A vet can call in an oral prescription to a VDT, who reduces the order to writing on an unnumbered official form. The second pending change, to rule #357 would clarify the unnumbered form is used for this oral Rx.

Statute requires the delivery of a completed numbered form by the Vet to the VDO within 72 hours of the oral prescription. Approval of pending rule changes to #357 would clarify this and allow the delivery of this completed numbered form via fax and e-mail, in addition to hand delivery and mail.

Rule 404 and 405 are fee tables. Approval of these pending changes would allow a pharmacy, who is required to register by June 30 of each year, to also register as a preceptor site simultaneously, as opposed to registering as a preceptor separately, due on April 1 of each year, by moving this registration from rule 405 to rule 404.

Rule number 405 and rule 100, to be heard today in docket # 21-0101-0805 are conflicting. The expiration date for externs in rule 100 is listed as July 15 following graduation, while 405 listed July 31 following graduation. Approval of this pending change would harmonize the rules to read July 15 and change the title of #405.

Rule #469 is entitled prescription reporting. Currently pharmacies are required by statute and rule to submit to the Board information on filled controlled substance prescriptions in schedules II, III, and IV. Approval of the pending change to rule #469 would add schedule V to this list. Schedule V drugs have a low potential for abuse or physical or psychological dependence, so they were initially not included in the Prescription Monitoring Program. However, in the past year, we have seen both diversion and adulteration cases involving schedule V drugs and therefore deem it necessary to track these drugs too. **Chairman Lodge** asked what a schedule V drug was. **Mr. Johnston** responded codeine cough syrup. Schedule V is unique in the fact that there is a rule that will allow you to buy small portions of certain schedule V without a prescription but that schedule V has expanded to many prescriptions that are not available without a prescription that do reside within schedule 5 like Lyraca. With the multitude of drugs that are now being scheduled in schedule five we think it is important to track.

MOTION **Chairman Lodge** moved to approve Docket 27-0101-0801. The motion was seconded by **Senator Darrington**. **The motion carried by voice vote.**

27-0101-0802 Relating to Rules of the Idaho Board of Pharmacy (Pending)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated pharmacotherapy is not a universal term. Nationally, this practice is called Collaborative Practice, a term currently used within rule #165.

The profession of pharmacy is evolving, particularly in the venues of cognitive services and technology. Statute 54-1704 defines the practice of pharmacy, in part, as the provision of those acts or services necessary to provide pharmaceutical care.

Statute 54-1705 (21) defines pharmaceutical care as drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process, as defined in the rules of the Board.

These rules have never really been defined, although pharmacotherapy, Rule #165, is the first attempt. Approval of pending changes to rule #165 would change the title of #165 to pharmaceutical care, create a definition in Section 165.01, including terms such as drug therapy management, a requirement of Medicare Part D. It would eliminate the term pharmotherapy and 165.02 would describe the parameters of a collaborative practice. It also creates a place for future rules involving pharmaceutical care. **Vice Chair Broadsword** queried if these rule dockets were being upgraded as part of a project that started last year with funding from JFAC. **Mr. Johnston** replied funding was received from JFAC starting this fiscal year. The majority of this work was done last fiscal year.

MOTION **Senator Hammond** moved to approve Docket 27-0101-0802. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

27-0101-0803 Relating to the Rules of the Board of Pharmacy (Pending)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated Docket 27-0101-0803 contains only one non-controversial change to Rule #251, entitled Pharmacy Technicians. Additional changes to pending Rule #251 are found within docket 27-0101-0811, to be heard later today.

Pharmacists are subject to discipline as per statute 54-1726. Approval of docket 27-0101-0804 would subject pharmacy technicians to the same discipline as pharmacists.

MOTION

Senator McGee moved to approve Docket 27-0101-0803. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

27-0101-0804

Relating to the Idaho Board of Pharmacy (Pending Rule and Amendment to Temporary Rule)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated Docket 27-0101-0804 contains only one rule, #458 currently entitled Time for Filling, starting on page #327. Pending Rule #458 is currently in effect as a temporary rule, as Federal legislation has been enacted, superseding our state rule. Approving changes to pending Rule #458 would harmonize our rules with federal code. It would change the title to the more descriptive 'Expiration date, Schedule II Prescription Drug Order, and replace the requirement of tendering a CII Rx to a pharmacy within 30 days of issuance to having the Rx expire after 90 days.

Senator Smyser asked what is the current expiration date? **Mr. Johnston** replied, currently a prescription has to be tendered to a pharmacy within 30 days. Once the prescription has been tendered it can be filled within fifteen months. This rule change would say that it expires after 90 days. The intension of the federal rule is so a physician can write multiple prescriptions on one date intended to supply a 90 day supply of schedule II medications that could be filled sequentially. The problem arose when three thirty day supplies were written, the patient would fill one and hold onto the other two, and by the time these were tendered they would be expired. This rule change harmonizes with the federal code.

Senator Smyser asked for a definition of schedule II drugs. **Mr. Johnston** explained schedule I would be illicit drugs, schedule II would be the drugs that have the highest risk for abusability or dependance examples would be oxycodone, oxycontin, narcotic pain relievers, also ryitalin which is methyl amphetamine several other classes which are the two largest.

Senator Darrington stated some physicians will write a prescription with a refill post date of one year. Will this rule change that practice? **Mr. Johnston** replied that by both state and federal law you cannot refill schedule II prescription. Schedule III, IV and V can be filled up to six times in a six month period. Non-controlled substance subscriptions would be good in this state for fifteen months.

MOTION

Senator Bock moved to approve Docket 27-0101-0804. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

27-0101-0805

Relating to the Idaho Board of Pharmacy (Pending Rule)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated Rules 010 to 114 can be read together, as many of these rules overlap, so they were condensed, creating the appearance of many changes, which are simply rearrangements. Only the changes that are substantive in nature will be addressed.

Approving changes to pending Rules 010 to 114 will create the definition of the nationally recognized term, student pharmacist, a term inclusive of both intern and extern when differentiation is not needed. The undefined term cancellation will be replaced with revocation. The requirements of licensure via examination, licensure of foreign graduates, and licensure via reciprocity, harmonizing with actual current procedure, eliminating out dated policy and terms will be clarified. It will place into rule the Board policy that imposes 40 intern hours per year away from the profession for reciprocal license applicants. It will eliminate the differentiation of intern hours into sub categories, as graduates of accredited institutions are now required to accumulate more than the Board required 1,500 hours in diverse practice settings. Thus, there is no reason for the Board and a second government entity, ISU, to also track this, streamlining our workflow. It will eliminate the intern to pharmacist ratio, as this ratio is incorporated into a larger ratio, including pharmacy tech and pharmacy clerks in Docket 27-0101-0811.

Senator LeFavour stated she has heard concerns from constituents regarding ratios and asked for more information. **Mr. Johnston** responded Rule 10.05 eliminates the definition of intern or extern and redefines it as student pharmacist as it will be incorporated into a larger definition in Docket 0811.

Rule #152 is entitled Reference Library. Approval of changes to pending rule #152 would allow for on-line references to satisfy the reference requirement, as currently only books or computer diskettes are allowed.

Rule #160 is entitled Prescription Transfer. Currently interns are allowed to transfer valid prescriptions from one pharmacy to another via telephone, except for controlled substance Rx's. Approval of changes to rule #160 would allow student pharmacists to transfer controlled substances via telephone, as long as a pharmacist is on the other end of the line and the student pharmacist is under the immediate supervision of a pharmacist.

Rule #187 is entitled "Prohibited Acts". Pending language was formed via informal negotiated rule making with the managed care industry. Approval of the pending changes to rule #187 would allow for a skilled nursing facility to utilize a formulary, as hospitals currently do, allowing for a more timely deliver of Rx items to these in-patients.

Rule #496 is entitled controlled substance inventory and requires that an

inventory be taken on the same date annually. Approval of the pending changes to Rule #496 would allow for this inventory to be taken within seven days of the prior year's inventory and eliminate overlapping language.

MOTION **Senator Darrington** moved to approve Docket 27-0101-0805. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

27-0101-0806 Relating to Rules of the Idaho Board of Pharmacy (Pending)

MOTION **Senator Hammond** moved to approve Docket 27-0101-0806. The motion was seconded by **Senator Smyser**. **The motion carried by voice vote.**

27-0101-0807 Relating to Rules of the Idaho Board of Pharmacy (Pending)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated Docket 27-0101-0807 contains rules that have been approved as temporary since 2006. Rules 265-269, describe the Remote Dispensing Pilot Program. Currently, the Adams County Health Clinic Pharmacy in Council is staffed by a pharmacy technician only. Pharmacists in the Park-vu Pharmacy in Weiser oversee this technician via telecommunications. This program is designed to serve rural communities, lacking pharmacy services. Approval of pending rules 265-269 would make these permanent, thus all language in the docket is underlined. The changes from the temporary rules which have been approved for three years are to allow for access to secure Remote Dispensing Machines, including stocking, in the absence of a pharmacist if specifically detailed in the Board approved Operating Memorandum.

The policy for returned, discarded or unused medications is changed from a stand alone policy to inclusion within the Operating Memorandum. The elimination of the term "operating agreement" harmonizes the rules by using the term "operating memorandum". Additionally, in 2006 a simple change to rule 010 was included in the original docket which included the definition of Board, meaning Idaho Board of Pharmacy. Approval of docket 27-0101-0807 would make this simple change permanent too.

MOTION **Senator Hammond** moved to approve Docket 27-0101-0807. The motion was seconded by **Senator Smyser**. **The motion carried by voice vote.**

27-0101-0808 Rules of the Idaho Board of Pharmacy (Pending)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated

The National Association of Boards of Pharmacy (NABP) partnered with the American Society of Consultant Pharmacists (ASCP) to address areas of pharmaceutical care in the context of long-term care facilities, which are largely populated by the nations growing number of seniors.

In March 2007, the NABP and ASCP issued the "NABP/ASCP Joint Report: Model Rules for Long-Term Care Pharmacy Practice." The Joint Report recommends that states update their pharmacy practice rules to keep pace with the evolution of the practice of long-term care pharmacy in order to better serve the interest of and protect the health, safety, and welfare of the residents of long-term care facilities. Various changes to the NABP Model Rules have been proposed.

The Board believes that the conclusions and recommendations of the Joint Report are well-taken and that it is in the interests of the public in Idaho for the Board to amend its rules regarding the practice of pharmacy in institutions to adopt recommendations where appropriate. These pending changes can found in Rules 252 to 257.

These changes define Long Term Care Facility, centralized prescription filling, centralized prescription processing, and chart order and prepackaging. Also, it will clarify that a prescription or chart order is not required to replace Rx items taken from an emergency kit. The changes will require that emergency kits be restocked in a reasonable time. The changes allow for an outside pharmacy that provides prescription processing or filling services for an institutional facility to contract with an outsourcing pharmacy for immediate needs of its patients.

Senator McGee moved to approve Docket 27-0101-0809. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

27-0101-0809

Rules of the Idaho Board of Pharmacy (Pending/Fee)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated Docket 27-0101-0809 contains a fee increase. The 2007 Idaho Wholesale Drug Distribution Act, not initiated by the Board of Pharmacy, contained a fiscal impact, which was not reported.

The Act required the fingerprinting of each wholesale distributor's designated representative. Last fiscal year, the Board incurred \$17,000 in fingerprinting charges without appropriation. Senator Werk asked me to return this year with a fee schedule increase of \$30 per wholesaler, which would exactly cover these costs.

Senator Hammond moved to approve Docket 27-0101-0808. The motion was seconded by **Chairman Lodge**. **The motion carried by voice vote.**

27-0101-0810

Rules of the Idaho Board of Pharmacy (Pending)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated Docket 27-0101-0810 Rule #156 contains changes which change the time period for reporting changes in employment from five days to ten days and adds the requirement that a pharmacist in charge must work a substantial part of his working time each month in the pharmacy where he has been designated pharmacist-in-charge.

This has been a policy of the Board for years. We've recently had cases where a staff pharmacist from a pharmacy located 100 miles away has been coerced into managing a pharmacy, that he hadn't visited in a month. The Board believes that this circumventing of policy has necessitate this pending rule change.

Senator Smyser queried how this works with rural communities. **Mr. Johnston** responded rural pharmacies do struggle to staff their stores however, there have been issues with absentee pharmacist in charge. For example, congruence with record keeping and of course the potential for diversions increase.

Senator Hammond stated concern regarding the use of substantial part of his working time each month and stated if a pharmacist in charge is scheduled for ten hours per month, and works only six hours, that would be a substantial part of his time. **Mr. Johnson** replied initially it was Board Policy that you only had to work three days a week. However, there are limited service pharmacies, or closed door pharmacies that are open only one day per week. If we had a rule that stated you had to work three days a week and the pharmacy was open only one day per week, there would be a conflict with the rule. **Senator Hammond** suggested language that could further clarify the rule might include pharmacy hours. **Mr. Johnston** replied all rules will be reviewed in the next three years and he would put this suggestion on the working list.

MOTION

Senator Hammond moved to approve Docket 27-0101-0810. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

27-0101-0811

Rules of the Idaho Board of Pharmacy (Pending)

Mark Johnston, Executive Director, Idaho Board of Pharmacy, stated Docket 27-0101-0811 contains changes to Rule #251, entitled pharmacy technicians. The Idaho Pharmacy Leadership Counsel consists of the Idaho State Pharmacy Association, the Idaho Society of Health System Pharmacists, Idaho State University's School of Pharmacy and the Board of Pharmacy. Together, these organizations approached the Board of Pharmacy, requesting this change. Since then, the Idaho Retail

Association and the Capital Pharmacy Association have endorsed this docket. All major pharmacy organizations in the State support these pending changes.

Currently pharmacies are staffed by pharmacists, potentially a student pharmacist, up to three technicians, and an additional category called "pharmacy clerks." Pharmacy clerks are not registrants or licensees of the Board of Pharmacy and don't exist within our rules or statutes.

Pharmacy clerks perform duties that are not within the scope of technician practice, such as cashiering, housekeeping, third party billing, etc. When these pharmacy clerks divert controlled substances, the Board can take no action, as these clerks are not our registrants. We can only call the police and hope for criminal prosecution. We have documented cases where pharmacy technicians, who have had their registrations revoked for diversion, have returned to work at the same location, as a pharmacy clerk.

This is obviously a concern to the Board. Approval of this docket would define the secured area of the pharmacy and require that all who work within it are registrants or licensees, with the exception of approved visitors for legitimate business purposes, such as IT workers, regional pharmacy managers, etc. Clerks would need to be registered as technicians.

Busy pharmacies, staffed with one pharmacist, currently work with three technicians, 1 clerk, and potentially one student pharmacist a potential ratio of 5:1. Approval of this docket would increase the ratio from three technicians per pharmacist to six pharmacy personnel per pharmacist an increase of just one, as the current job titles of clerks, interns and technicians would be wrapped into this one ratio.

Many pharmacists have heard the rumors of the tech ratio doubling and stand opposed, without taking the time to understand the entire rule. As I speak at continuing education classes around the state, pharmacists understand and a few are opposed to the rule.

If we are to increase the ratio, the Board feels it is important to establish minimum standards. Currently, to become a registered pharmacy technician, you simply need to fill out an application and pay \$35.

Approval of this docket would require that technicians are 18 years of age and be a high school graduate or have attained a GED. These requirements can be overridden by the Executive Director, designed to be used if an applicant is enrolled in an official high school work program.

The most important minimum standard is obtaining national certification through one of the two recognized certification programs. This consists of passing a test and then maintaining certification each year, by completing continuing education programs.

Because of this requirement, a tech-in-training registration would be

needed. This would be renewable once, equating to a two year period for technicians to become certified.

However, all technicians who are registered by July 1, 2009 would be grandfathered in, as long as they maintain employment with their current employer.

The Board believes the competency of technicians can be measured in two categories. The first is competency in pharmacy and the second is competency with your current employer's computer system, work flow, etc. The Board believes that if you change employers and have to learn a new computer system, work flow, etc., you would have to prove your competence in pharmacy by obtaining national certification.

The last portion of this docket contains a safe guard for the public, staff pharmacists, etc. It states that if a pharmacy or a pharmacist-in-charge operate a ratio within the allowed 6:1 in their particular practice setting, but this ratio results in an unreasonable risk of harm to public health and safety, the pharmacy and Pharmacist in Charge can be disciplined by the Board.

Different practice settings and different pharmacist abilities exist, which might render the 6:1 ratio unreasonable in certain circumstances.

Kellina James, pharmacy technician, testified In support of this rule change.

Senator McGee commented it was his understanding some technicians are concerned with passing the exam, under this rule wouldn't they be grandfathered in? **Ms. James** replied as long as they maintain employment with their current employer. **Senator Lefavour** stated it does provide reassurance that the burden is on the Pharmacist in Charge to keep the pharmacy area secure, however, she did not hear the inclusion of clerks in the ratio. **Mr. Johnston** replied, since clerks do not exist in the law books, elimination was unnecessary. The language defines the secure pharmacy area and states everyone in the secure area must be registered or licensed with the exception of approved visitors for legitimate business purposes, such as IT workers, regional pharmacy managers, etc. **Senator LeFavour** commented it is conceivable the pharmacist could have other people outside the secure area that they would be supervising. **Mr. Johnston** responded there are some pharmacies where the pharmacy manager or the Pharmacist in Charge are also in charge of the over the counter drug section, this would not cover anyone that is outside of that area and currently it does not cover anyone outside of the secure area.

MOTION

Senator Bock moved to approve Docket 27-0101-0811. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

ADJOURNMENT Chairman Lodge adjourned the meeting at 4:35 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 4, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed participants. **Chairman Lodge** turned the meeting over to **Vice Chair Broadsword** to begin presentation of the rules.

RULES

24-2401-0801 Relating to the Rules of the Board of Naturopathic Medical Examiners

Former Representative Jack Barraclough, Chairman, Idaho Board of Naturopathic Medical Examiners, stated there was general support for the rule, but concerns were expressed regarding the education and exam portion of the rule and added the rules are still deficient in some areas. He added they are trying to have a one size fits all license and this may not be able to resolve this issue without changing the statute. Representative Barraclough thanked the committee for their patience.

Roy Eiguren, Attorney, representing the Board of Naturopathic Physicians, stated the Association supports rejection of the rules. The appropriate basis for this is outlined in the memo from legislative staff that came to the interim group on the reasons why the rules should not be approved. Specifically the rules do not address criteria as it relates to both accreditation and licensure. Based on this information they believe the rule should be rejected.

Mr. Eiguren stated he has had discussions with the other associations about finding a mechanism by which we can attempt to mediate and resolve their differences.

Kris Ellis, Idaho Chapter of American Association of Naturopathic

Physicians, testified the Association stood in opposition of these rules.

MOTION

Senator McGee moved to reject Docket 24-2401-0801. The motion was seconded by **Senator Darrington**. **The motion carried by voice vote.**

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

RS18248

Relating to the Idaho Community Health Center Grant Program

Mary Sheridan, Program Manager, State Office of Rural Health & Primary Care, Bureau of Health Planning and Resource Development, Department of Health & Welfare, stated the purpose of this bill is to modify title 39, Health and Safety, Chapter 32, Idaho Community Health Center Grant Program, to align the grant award schedule with Title 39, Health and Safety, Chapter 59, Idaho Rural Health Care Access Program.

These programs are the responsibility of the State Office of Rural Health and Primary Care staff with grant award decisions made by the Health Care Access Program Board (Idaho code section 39-5904). The Community Health Center Grant Program and Rural Health Care Access Program currently operate under different grant award schedules; and therefore, the Board must convene on two separate dates to conduct similar reviews. Modifying the community Health Center statute to align the grant award schedule with the Rural Health Care Access Program statute eliminates one board meeting per year and decreases associated costs.

Annual board meeting expenses total approximately \$1500 per fiscal year for each program. Aligning these complimentary programs on the same time line will eliminate the cost of one board meeting for an annual general fund cost savings of approximately \$1500 per fiscal year.

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 print RS18248. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

RS18249

Relating to Dead Human Bodies

James Aydelotte, Bureau Chief, Bureau of Vital Records and Health Statistics, Department of Health and Welfare, stated *Section 54-1119*,

Idaho Code gives the Department of Health and Welfare the jurisdiction to regulate, control, and supervise the preservation, embalming, handling, transportation, and burial and disposal of all dead human bodies and is authorized to make rules to protect the public health. This section of Idaho Code unnecessarily duplicates other authority provided by law and rule, and confusion has arisen in the past about whether this section was intended to give the department authority to regulate the funeral home industry, we are proposing the deletion of section 54-1119, Idaho Code.

Currently, both the expertise and statutory authority to determine appropriate education, training, and standards to ensure that dead bodies are safely handled rests with the Board of Morticians. These guidelines are found in chapter 11, title 54 of Idaho Code and their related rules. We have conferred with the Board of Morticians, and they support this legislation.

Through other statutory authority, the Department of Health and Welfare will retain its ability to protect the public health. For example, if the Department determined that a body posed a threat to the public health, the body or the place where it was held could be quarantined until a determination for appropriate disposition could be made. Since this statute was originally passed, FDA regulations governing handling of organs and tissues from transplantation have been issued, further protecting the health of the public.

This repeal clarifies who has responsibility to ensure bodies are handled safely.

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 print RS18249. The motion was seconded by **Senator Smyser**. **The motion carried by voice vote.**

RS18246

Relating to Regional Mental Health Boards

Kathleen Allyn, Administrator, Division of Behavioral Health, Department of Health and Welfare, stated this legislation increases children's mental health representation on regional mental health boards and clarifies statutory language about representation for adults with mental illness. Specifically, the legislation provides for representation by two parents of children with serious emotional disturbance, a representative of juvenile justice in the region, and a representative of public education in the region and eliminates references to children's mental health regional councils. The statutory language is clarified to specify that the consumer representatives are adults with mental illness.

The fiscal impact of this proposal consists of the actual and necessary costs of three (3) additional people attending the seven (7) regional mental health boards meetings and is expected to be less than \$2,500 per year.

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 LeFavour moved to print RS18246. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

RS18462

Relating to the Idaho Wholesale Drug Distribution Act

Suzanne Budge, on behalf of Healthcare Distribution Management Association (HDMA), stated HDMA represents the nation's primary, full-service pharmaceutical distributors. This legislation would amend S1184 passed during the 2007 legislative session. The original "pedigree legislation" of 2007 put into place provisions designed to secure the safety and integrity of Idaho's prescription drug supply chain and to bring Idaho into alignment with the other states. This clean up legislation makes a minor change to current law to recognize the business model of prescription drug distributors and facilitate the timely delivery of vital medicines to Idaho hospitals and pharmacies without compromising drug safety. Specifically, this bill adds one specific type of transaction (when a drug goes directly from a manufacturer to an FDA registered repackager and then to a wholesaler) to the list of routes included in the definition of "normal distribution" which then would not require a separate written record of transaction or "pedigree".

This legislative change is supported by the Idaho Board of Pharmacy, the regulatory authority for prescription drug wholesales in the state of Idaho, and by PhARMA (Pharmaceutical Research & Manufacturers Association), their member companies in Idaho, including the sponsor of the original legislation passed in 2007.

Vice Chair Broadsword commented the original purpose of the bill was to keep counterfeit drugs out of our pharmaceutical supply and the changes proposed will not affect this, is that correct? **Ms. Budge** replied that was correct. **Vice Chair Broadsword** stated that the committee had heard from the Board of Pharmacy and they included rules that pertained to the Wholesale Distribution Act and queried if new rules would have to be promulgated due to this change. **Ms. Budge** responded she could not speak for the Board, however, she has been in communication with them and they do support and did approve formally this change.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 5).

MOTION

Vice Chair Broadsword moved to print RS18462. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

**GUEST
SPEAKER**

Denise Chuckovich, Executive Director Idaho Primary Care Association-Community Health Centers (CHC) presented information regarding Idaho Community Health Care Centers and the effects of H159 passed by the legislature which created an infrastructure grant program for community health center. Last year the House and Senate voted to place \$1,000,000 into the grant fund.

The Department of Health & Welfare implemented a competition based grant program last fall and issued seven grants to CHC's ranging from \$27,400 to \$193,000. Preference was given to applications for dental service expansion. Six of the seven application's received were for dental expansion funds.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 6).

Chairman Lodge thanked **Ms. Chuckovich** for sharing this important information.

MOTION

Vice Chair Broadsword moved to approve the minutes of January 26 and 27, 2009. Senator Hammond seconded the motion. **The motion carried by voice vote.**

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:10 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 5, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, and LeFavour

MEMBERS ABSENT/ EXCUSED: Senator Bock

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

RS18294 Relating to Cosmeticians

Senator Hill stated the purpose of this legislation is to simplify the procedures for obtaining a temporary permit to practice, demonstrate or teach cosmetology services outside a licensed establishment. This is to facilitate providing charitable cosmetology services at no charge, teaching demonstrations at schools or other facilities, etc., to give cosmetology students broader experiences and to benefit the general public.

There is no impact to the general fund, however, this legislation may reduce the time required by the Bureau of Occupational Licenses to process temporary permits.

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

MOTION **Senator Darrington** moved to print RS18294. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

GUEST SPEAKER **Dr. Doug Dammrose**, Chief Medical Officer, Blue Cross of Idaho, gave a presentation on "Managing for Healthy Populations."

Senator McGee commented, as policy makers they would be interested in discussing how some of the innovative ideas presented could be translated into public policy. **Dr. Dammrose** responded he was not sure he had answers but did have some suggestions about opportunities to do some exploration.

Senator Coiner asked if Dr. Dammrose could touch on mental health parity. **Dr. Dammrose** responded it has been interesting. We all proceeded into the pilot project era with a certain amount of trepidation.

One of the first cases was a lady that had been hospitalized eighty times in one year. She did not have a mental health diagnosis. She was burning all kinds of health care resources. However, when she finally was diagnosed, it was found that she actually had significant mental issues. Not only did she have mental illness, but also mental retardation.

She would show up in emergency rooms for drug overdoses, ventilator treatment in the Intensive Care Unit (ICU), things like that. By engaging case management, mental health case managers, and really working through all the capability of our system, and some of the state agencies, we have kept her essentially out of the hospital.

Those kinds of cases are more common than I would like to know. We are still looking at the actual numbers of the total impact on the global cost of care. Whenever more is spent for broadened mental health benefits, more is saved in the back end of medical costs. **Senator Coiner** asked if it is effective for Blue Cross to look at mental health parity beyond the pilot program. **Dr. Dammrose** replied yes, Blue Cross is engaged with consultants to find the best way to manage mental health parity federally. Not only to control costs of care but also to assure the benefit design meets the needs of these individuals. This is one of those areas that has been missed and managed ineffectively in the past.

Senator LeFavour questioned the Dartmouth Health Atlas chart of higher spending, lower quality, overall ranking of annual Medicare spending per beneficiary, and wondered what was the Y axis used. **Dr. Dammrose** replied the Y axis used metric of quality is similar to what was described in the HEDIS* reports which were metrics based on frequency of tests such as mammography or pap smears. Another example would be. The way diabetics are managed against guidelines. These are considered quality metrics.

Senator LeFlavour asked if this applied to all of healthcare or just within Medicare? **Dr. Dammrose** replied this was for medicare recipients that are insured by medicare. The analysis looks at services received vs. cost. There was an article published in the New England Journal of Medicine by Dr. McGlinn that stated regardless of insurance status in the United States, approximately 55% of the people receive evidence based appropriate care. What this indicates is quality of health care is unrelated to spending. Healthier people with healthier

outcomes.

Senator LeFavour asked if this was preventive care? **Dr. Dammrose** replied not entirely. There are quality metrics around the appropriateness of medical care. For example, diabetic care includes controlling blood pressure, lipids, sugars, etc., these are true medical metrics. Spending is not related to quality.

Vice Chair Broadsword asked if Dr. Dammrose could comment on defensive medicine. **Dr. Dammrose** responded that a good example of defensive medicine is the case of a patient that had returned to the emergency room with a very simple constellation of findings which were fever, chills and slight pain. The urinalyses indicated white blood cells. Most colleagues would give it a quick diagnosis as a kidney infection which treated with primary care would cost about \$100. This patient received a CAT scan (CT) of the abdomen and kidney because the emergency room doctor thought this patient could have a tumor obstruction. The CT scan is in the \$1500 range and the results came back confirming a kidney infection.

The patient was sent home and advised to meet with a urologist. The patient sees the urologist, the urologist reads the CT scan and determines it might be abnormal. The urologist then orders an ultrasound. The ultrasound confirms resolving kidney infection. However, the ultrasound cannot be compared to the original CT so a subsequent CT is ordered. In conclusion, a \$100 case of pyelonephritis (kidney infection) escalates to a \$3000 case of pyelonephritis, primarily for the purpose of defensive medicine.

Vice Chair Broadsword asked if Blue Cross has discussed with the Hospital Association the possibility of treating incidents as a primary care visit. They do a simple procedure first and if it is necessary follow up with a more severe procedure. **Dr. Dammrose** responded they have addressed physicians on an individual basis in the way they provide care. Blue Cross has collaborated with the Idaho Hospital Association regarding pay for performance which does focus on similar issues, but not necessarily on utilization of defensive medicine.

ADJOURNMENT

Chairman Lodge on behalf of the committee thanked Dr. Dammrose for the presentation and adjourned the meeting at 4:02 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 9, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

RS18273 Relating to the Idaho Conrad J-1 Visa Waiver Program and the National Interest Waiver Program

Mary Sheridan, State Office of Rural Health & Primary Care, Department of Health & Welfare, stated the purpose of this bill is to amend Title 39, Health and Safety, Chapter 61, Idaho Conrad J-1 Visa Waiver Program, to establish National Interest Waiver criteria for physicians. A National Interest Waiver provides a mechanism for a foreign physician pursuing a change in immigration status to stay in the United States in exchange for a commitment to practice medicine to an underserved population for a three to five year period. The National Interest Waiver requires an attestation from the states Department of Health and Welfare to the U.S. Bureau of Citizenship and Immigration Services. Idaho communities may only apply for the placement of a foreign physician after demonstrating their inability to recruit an American physician, and all other recruitment/placement possibilities have proven to be unsuccessful.

This bill also modifies the Idaho Conrad J-1 Visa Waiver Program, Section 39-6111(4), to allow physicians to show proof of eligibility for an Idaho license as part of the application criteria. Successful completion of the residency or training program and an unrestricted license to practice medicine in the State of Idaho are conditions for employment.

The administration of a National Interest Waiver Program in Idaho will be funded by receipts generated from levying a processing fee of \$350 for each application received. At the beginning of each state fiscal year, the

cost to administer the program will be reviewed and may be revised at the discretion of the Director of the Department. The Department estimates that one application will be processed from communities in FY 2009. The processing fee will support the time of staff and other associated costs to review and process the application. Other than the obligatory fee, there are no federal or state funds to support this program. There is no impact to the General Fund.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

Senator Darrington moved to print RS18273. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

S1063 Relating to Idaho Community Health Center Grant Program

Chairman Lodge stated this bill would be held in committee until changes could be made.

S1065 Relating to Regional Mental Health Boards

Kathleen Allyn, Administrator, Division of Behavioral Health, Idaho Department of Health and Welfare, stated this legislation increases children's mental health representation on regional mental health boards and clarifies statutory language about the representation for adults with mental illness. Specifically, the legislation provides for representation by two parents of children with serious emotional disturbance, a representative of juvenile justice in the region, and a representative of public education in the region and eliminates references to children's mental health regional councils. The statutory language is clarified to specify that the consumer representatives are adults with mental illness.

The fiscal impact of this proposal consists of the actual and necessary costs of three (3) additional people attending the seven (7) regional mental health boards and is expected to be less than \$2,500 per year.

Vice Chair Broadsword voiced concern regarding language that specifies two parents of children no older than twenty-one (21) years of age. Her understanding is that twenty-one years of age is an adult not a child. **Ms. Allyn** responded the child has to have been identified as having a serious emotional disturbance before the age of eighteen (18). When the parent is appointed, the child can not be older than twenty-one.

What often happens is a parent is appointed to the Board and then the child becomes an adult. The parent is still familiar with what it is like to

have children with a serious emotional disturbance even though the child is an adult. It seems irrational to eliminate the parent from the Board because their child is no longer under the age of twenty-one (21). **Vice Chair Broadsword** asked if this language was a negotiated settlement by the folks that have served on the Children's Mental Health Council. **Ms. Allyn** responded yes. **Vice Chair Broadsword** asked if the \$75,981 was mostly Federal dollars, what is the State match? **Ms. Allyn** responded the payment was two-thirds State, one third Federal. The first year of the grant it was 100% federal and over the six year period dropped to 50% and now 75% State/25%Federal.

Former Representative Kathi Garrett testified in support of this legislation.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 2, 3, 4,5).

MOTION

Senator McGee moved to send S1065 to the floor with a do pass recommendation. **Senator LeFavour** seconded the motion. **The motion carried by voice vote. Senator LeFavour** will sponsor this bill.

**GUEST
SPEAKER**

Larry Callicutt, Director, Idaho Department of Juvenile Corrections gave a presentation to the committee.

Chairman Lodge asked if the Department had ever tracked the reason why juveniles re-offend and end up in the adult system. **Mr. Callicutt** replied after release from the juvenile system many offenders return to the same environment they came from and they resume relationships with their negative peer groups. Unfortunately, many of those peer group individuals are using illegal substances, behaving badly and getting into trouble which leads to a life of crime.

Chairman Lodge stated there are some juvenile offenders that have gone to Job Corp, have those offenders been out long enough where it makes a difference getting out of the home environment? **Mr. Callicutt** responded it is proven that structure and pro-social role models in the community is important. For someone to go out, have a place to live, have a job, in essence have something to strive for is huge. The Department presently has an initiative at the Nampa facility where four young men have been accepted to Job Corp. The Department has agreed to house the boys at the facility for sixty days to help them make the transition.

Job Corp is apprehensive about taking these juveniles. In the past, Job Corps required a juvenile to be out of the system for a minimum of six months and off probation before accepting them. To give juveniles the opportunity to learn a trade skill such as wood working, welding,

plastering, etc., this can help them obtain a quality of life that they wouldn't otherwise have. With the Department taking the initiative and the willingness of Job Corp to work with juveniles, it will help these boys make the transition and it will make a difference.

Director Callicutt thanked the committee.

ADJOURNMENT **Chairman Lodge** on behalf of the committee thanked Director Callicutt for the presentation. **Senator Lodge** adjourned the meeting at 4:03 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 10, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: None

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

S1066 Relating to the Idaho Wholesale Drug Distribution Act

Suzanne Budge, on behalf of Healthcare Distribution Management Association (HDMA), stated HDMA represents the nation's primary, full-service pharmaceutical distributors. This legislation would amend S1184 passed during the 2007 legislative session. The original "pedigree legislation" of 2007 put into place provisions designed to secure the safety and integrity of Idaho's prescription drug supply chain and to bring Idaho into alignment with the other states. This clean up legislation makes a minor change to current law to recognize the business model of prescription drug distributors and facilitates the timely delivery of vital medicines to Idaho hospitals and pharmacies without compromising drug safety.

This bill adds one specific type of transaction (when a drug goes directly from a manufacturer to an FDA registered re-packer and then to a wholesaler) to the list of routes included in the definition of "normal distribution" which then would not require a separate written record of transaction or "pedigree."

This legislative change is supported by the Idaho Board of Pharmacy, the regulatory authority for prescription drug wholesales in the state of Idaho, and by PhARMA (Pharmaceutical Research & Manufacturers Association), their members' companies in Idaho, including the sponsor of the original legislation passed in 2007.

Susan Pilsh, Associate Director, State Government Affairs, testified on behalf of Healthcare Distribution Management Association (HDMA), the national trade association representing primary pharmaceutical distributors. HDMA's member companies are responsible for storing, managing and delivering 85 percent of prescription medicines sold in the U.S.

HDMA's pharmaceutical distributor members typically purchase prescription medicines from more than 700 different manufacturers. HDMA safely stores these medicines in state-of-the-art distribution centers across the country making daily deliveries to the nation's 144,000 pharmacies, hospitals, nursing homes, physician offices and other healthcare providers.

The original "pedigree legislation" of 2007 put into place precision designed to secure the safety and integrity of Idaho's prescription drug supply chain and to bring Idaho into alignment with other states. Over the past five years, approximately 28 states have passed some version of what is known as "pedigree" legislation or regulations designed to help secure or protect the pharmaceutical supply chain from counterfeits or tampering. This type of legislation was initially passed by Florida in 2003 in response to a highly publicized drug counterfeiting problem. In the majority of states that have tackled this issue, this type of legislation requires that a "pedigree" or proof of the chain of custody for the drug be created and maintained for all drugs that travel outside what is known as the "normal distribution channel."

Medications are packaged in bulk by the manufacturer and shipped to the re-packager. The re-packager puts them into individual "unit doses". The HDMA distributor members buy the individual doses from the re-packager then sell them to customers.

This legislation speaks to a situation specific to Idaho. HDMA distributor members in Idaho provide significant amounts of "unit doses" or individual doses of medication to hospitals, nursing homes or nursing facilities.

This specific transaction, through oversight in the original legislation, is not currently included in what's known as "normal distribution". HDMA distributors in Idaho have to create a "pedigree", a written chain of custody or documentation, for each unit dose. Not all distribution centers are configured to produce and maintain pedigrees causing major delays in delivery. For example, rather than shipping from our distribution center in Salt Lake City, shipments to Idaho are sent from Florida resulting in significant delivery delays of needed product.

The Board of Pharmacy heard from a number of pharmacies in the State regarding delivery delays of needed medications and requested the emergency clause in this legislation.

Senator Bock asked, "How many layers of distribution are there?" **Ms. Pilsh** replied under the "normal distribution channel" definition in this legislation, both commonly used routes and high risk of diversion routes are covered and typically involve three to four layers.

This legislation is limited and restrictive. The way this transaction works is bulk product from the manufacturer is shipped to the re-packager. The re-packager packages the bulk product into unit doses. The unit doses are sold to distributors and purchased by customers. The customers in Idaho are hospitals, nursing homes or skilled nursing facilities.

MOTION

Vice Chair Broadsword moved to send S1066 to the floor with a do pass recommendation. **Senator Hammond** seconded the motion. **The motion carried by voice vote. Senator Hammond** will sponsor this bill.

**GUEST
SPEAKER**

Amy Castro, Legislative Budget & Policy Analyst, provided to the Committee an overview presentation of the Health and Welfare Budget.

Ms. Castro answered questions by various members of the committee who sought clarification on certain budget line items.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:02 P.M..

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 11, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

MOTION **Senator LeFavour** moved to approve the minutes of January 28, 2009. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

MOTION **Senator Bock** moved to approve the minutes of January 29, 2009. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

GUBERNATORIAL APPOINTMENTS FOR HEARING ONLY **Carol Mascarenas** of Idaho Falls, ID was appointed to the Board of Environmental Quality to serve a term commencing August 14, 2008 and expiring July 1, 2012.

Chairman Lodge asked Ms. Mascarenas, how she handles environmental issues that have many diverse opinions and points of view?

Ms. Mascarenas responded in the environmental field not one discipline or one person is an expert.

Civil engineers in the environmental field work with geologists, toxicologists, scientists, etc., that are educated differently and have different ways of looking at issues. Then you introduce the public

opinion.

She said working from the regulator's side, explaining to the public actions taken, as well as working with the Citizens Advisory Board have enhanced her appreciation for different views.

Chairman Lodge asked as situations arise and there is a conflict of interest how would she handle that? **Ms. Mascarenas** answered she would recuse herself.

Vice Chair Broadsword asked if there was a great deal of difference between working with the California Environmental Protection Agency and Idaho Department of Environmental Quality? **Ms. Mascarenas** responded they are very similar, both have an open public policy and are very progressive in their approach. **Senator McGee** commented there is quite an investment of time associated with being a Board member and assumed she was aware of this. **Ms. Mascarenas** replied yes she had already experienced her first meeting which included four three inch binders to review. She was aware of the commitment.

Senator Darrington stated members appointed to the board are chosen for knowledge of and interest in air, water and solid waste issues, then asked which of these categories was Ms. Mascarenas appointed. **Ms. Mascarenas** replied the solid waste category.

Chairman Lodge thanked Ms. Mascarenas and stated the committee would vote on her confirmation Monday, February 16, 2009.

**GUBERNATORIAL
APPOINTMENTS
FOR HEARING
ONLY**

Joan Cloonan was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2008 and expiring July 1, 2012.

Chairman Lodge thanked Ms. Cloonan and stated the committee would vote on her confirmation Monday, February 16, 2009.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1, 2).

S1073

Relating to Cosmeticians

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, and the Boards and Commissions it serves, stated the purpose of this legislation is to simplify the procedures for obtaining a temporary permit to practice, demonstrate or teach cosmetology services outside a licensed establishment. This is to facilitate providing charitable cosmetology services at no charge, teaching demonstrations at schools or other facilities, etc., to give cosmetology students broader

experiences and to benefit the general public.

There is no impact to the general fund. However, this legislation may reduce the time required by the Bureau of Occupational Licenses to process temporary permits.

MOTION

Senator Hammond moved to send S1073 to the floor with a do pass recommendation. **Senator Bock** seconded the motion. **The motion carried by voice vote.**

RS18296

Relating to Public Assistance and Welfare; Repealing Section 56-1019 Idaho Code, Relating to Services to Victims of Cystic Fibrosis

Mitch Scoggins, Coordinator of the Children's Special Health Program in the Division of Health and Welfare, stated that RS 18296 relates to Services to Victims of Cystic Fibrosis. *Idaho Code §56-1019*, "requires that the Department of Health and Welfare pay for services to persons with cystic fibrosis who are 21 years of age or older."

Cystic Fibrosis (commonly referred to as "CF") is an inherited chronic disease that has serious consequences including lung and digestive problems.

This Decision Unit, supported by the Governor to achieve his 4% holdback, eliminates the costs of the Adult Cystic Fibrosis Program saving \$205,000 per year in general funds. The Department is proposing to repeal this statute.

The adult CF program is managed by the Children's Special Health Program (or "CSHP") since CSHP also manages the pediatric CF program in Idaho. Currently there are 63 adult patients enrolled in Idaho's CF program, but only eight do not have insurance.

Unlike other conditions, CSHP pays for a patient's CF related insurance deductibles and insurance co-pays up to the program maximum benefit of \$18,000 per year. While some of the services that CSHP currently covers would be discontinued as a result of this repeal, the program will not abandon these patients. The program will continue to offer clinical services to adults with CF. Idaho is fortunate to have a Cystic Fibrosis Center which is a satellite of the Denver, Colorado Center. Idaho's Center, which is based in St. Luke's Children's Specialty Center, has been receiving national attention for their exceptional outcomes.

The clinical costs of Idaho's CF Center are fully supported with federal funds through the Department of Health and Welfare. This contract is paid at a flat fee regardless of the number of patients seen. Therefore, CSHP has been able to make arrangements for adults to continue to receive services at the Idaho cystic fibrosis center if this statute is repealed.

In addition to the services that CSHP will continue to provide, there is a wide range of other services available to adults with CF through non-governmental programs. The national Cystic Fibrosis Foundation and other organizations concerned with CF have put forth significant effort to ensure that CF patients have access to the care they need.

In 1997 when the \$18,000 cap was set in the CSHP Rules, no one ever reached that cap, so CF patients in Idaho had no need to access patient assistance programs. This is no longer the case, so more and more CF patients in our program are already pursuing these alternatives each year once their CSHP benefits are exhausted.

There are many organizations that offer assistance with CF medications, supplies, and devices - and even with insurance premium co-pays and deductibles. In light of the economic issues facing Idaho, the Department of Health and Welfare must propose reducing some services, including those to adults with CF.

In 1978 when the CF statute was first passed, the general fund appropriation was \$24,000. This fiscal year's appropriation is \$205,000 and the program is projecting a shortfall of more than \$32,000. The Adult CF program's expenses have increased 7.600% in the last 10 years. If this growth pattern is carried out in a straight line projection for the next 10 years, this program would require an appropriation of more than \$18 million by 2019.

The Department has tried to be creative in finding a solution which maintains the high quality of services available through our satellite CF center, while eliminating the impact on state general funds. We recognize that cutting benefits to anyone is difficult. Through continued access to care through Idaho's CF center, and the many assistance programs available to patients, we have tried to implement this budget decision in the most responsible manner possible.

Vice Chair Broadsword asked what surrounding states offer adult CF patients. **Mr. Scoggins** responded Idaho is the exception rather than the rule nationwide in offering continued service to adults with CF.

Senator McGee questioned if the state eliminates this funding will treatment continue through the CF Center? **Mr. Scoggins** replied Through the multi-disciplinary clinic, which is held at St. Lukes Hospital, individuals will receive consultation and laboratory tests, however, treatment in that setting does not include medication. **Senator McGee** stated **Mr. Scoggins** mentioned in testimony there are other avenues available to these individuals. **Mr. Scoggins** replied yes, there are many organizations that offer assistance with CF medications, supplies, and devices and even with insurance premium co-pays and deductibles.

Senator Bock queried how many individuals are receiving benefits and what is the range of benefit in terms of dollars. **Mr. Scoggins** replied CF patients need a considerable amount of medication, primarily antibiotics and prophylactic antibiotics to prevent and stave off infection.

A variety of other medications and nutritional supplementation to maintain body weight are also needed. Equipment needs, such as home infusion IV antibiotic therapies. There are sixty-three patients in the program receiving services, eight of which are uninsured. Currently the department is incurring full costs, up to \$18,000 per fiscal year, for those eight patients and the department pays co-pays and deductibles for the remaining fifty-five who are insured. The ranges of benefits are capped at \$18,000 per year and the uninsured patients almost always hit that cap sometimes within four or five months.

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 McGee moved to send RS18296 to print. **Vice Chair Broadsword** seconded the motion. **The motion carried by voice vote.**

RS 18599

Relating findings of the Legislature and Rejecting a Certain Rulemaking Docket of the Department of Environmental Quality Relating to Individual/Subsurface Sewage Disposal Rules

Vice Chair Broadsword stated this concurrent resolution would reject the entire Docket 58-0103-0801 of pending rule of the Department of Environmental Quality relating to Individual/Subsurface Sewage Disposal Rules. The effect of this resolution, if adopted by both houses, would be to prevent the agency rulemaking contained in the Docket from going into effect. This concurrent resolution has no fiscal impact.

MOTION

Senator McGee moved to send RS18599 to print. **Senator Bock** seconded the motion. **The motion carried by voice vote.** **Vice Chair Broadsword** will carry the bill.

RS 18269

Relating to Food Establishments

Russell Duke, Director, Central District Health Department, stated this legislation will amend the annual license fee for food establishments in the Food Establishment Act under Idaho Code 39-1607. It will increase the fee from \$65 to a higher level depending on the type of food facility.

The new fees will be based on a three tiered system to ensure a more equitable means to have industry share in a portion of the cost for Idaho's food safety program. The tiers and fees are \$191 for intermittent, temporary and mobile food establishments, \$200 for medium risk food establishments and \$212 for high risk food establishments.

The fees will be phased in over a two-year period. The first year the fee will move halfway between the current fee and the new fees. The second year the fee will move to the full fee. The fee increase will require that the food industry pay a larger portion of the cost of the food safety program.

This legislation also amends the definition section to the Food Establishment Act under *Idaho Code 39-1602* to add definitions for the types of food establishments described in the tiered system of *Idaho Code 39-1607*.

This change will shift a greater portion of the current funding source for the Food Safety Program from state and county funds to the licensed food establishments operating in Idaho. The estimated dollar amount of this shift is \$1,214,500. There is no change in operational costs (budget neutral) but rather a shift in source of funding.

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 Darrington moved to send RS18269 to print. **Senator McGee** seconded the motion. **The motion carried by voice vote.**

GUEST SPEAKER

Former Representative Kathie Garrett, Co-Chair, Idaho Council on Suicide Prevention gave a presentation to the committee. She answered questions by various members of the committee.

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:02 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 16, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

GUBERNATORIAL APPOINTMENT **Carol Mascarenas** of Idaho Falls, ID was appointed to the Board of Environmental Quality to serve a term commencing August 14, 2008 and expiring July 1, 2012. **Ms. Mascarenas** political affiliation is Democrat.

MOTION **Vice Chair Broadsword** moved to approve the appointment of **Carol Mascarenas** to the Board of Environmental Quality. The motion was seconded by **Senator Smyser**. **The motion carried by voice vote.** **Senator Smyser** will sponsor the candidate.

GUBERNATORIAL APPOINTMENT **Joan M. Cloonan** of Bose, ID was appointed to the Board of Environmental Quality to serve a term commencing July 1, 2008 and expiring July 1, 2012. **Ms. Cloonan's** political affiliation is Republican.

MOTION **Vice Chair Broadsword** moved to approve the appointment of **Joan M. Cloonan** to the Board of Environmental Quality. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.** **Senator Hammond** will sponsor the candidate.

RS18293C1 Relating to Insurance Contracts

Senator Bair stated certain children suffer from severe, life-threatening food allergies. For children with this very rare condition, elemental (amino-acid based) formulas allow these children to absorb nutrition, heal and grow without requiring prolonged intravenous feeding. These severe food allergies usually are not present at birth and, when treated correctly, usually resolve over time.

Some health plans refuse to cover the lifesaving nutritional formula which may cost more than many families can afford (up to \$2400 per month). This bill requires that health plans not exclude coverage for these children, and cover the cost of this lifesaving treatment as they do for other conditions (congenital and metabolic conditions). Proof that the formula was medically necessary would still be required.

There is no fiscal impact to the general fund.

MOTION

Senator LeFavour moved to print RS18293C1. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

RS18325C1

Relating to Emergency Medical Services

Dia Gainor, Chief, Emergency Medical Services Bureau, Department of Health and Welfare, stated since the original Emergency Medical Services (EMS) Act in the early 1970s, the Idaho Legislature has recognized the importance of reasonable regulation of the EMS system in Idaho.

This regulation largely takes the form of licensing the individual personnel who care for patients in ambulances and other emergency settings through a process similar to other health care professions and licensing the entities that operate local EMS agencies.

This legislation refines content in the current EMS code to include contemporary terms. Currently, all language about investigations and discipline is in rule and is outdated. The legislation also introduces provisions clarifying the EMS bureau's authority to investigate and act against those licenses when violations of laws or rules occur, thereby protecting the public.

There is no impact to the general fund. No new activity will be undertaken as a result of passage of this legislation.

MOTION

Senator McGee moved to print RS18325C1. The motion was seconded by **Vice Chair Broadsword**. **The motion carried by voice vote.**

RS18672

Relating to Pharmacists

Senator Bock stated the Idaho Legend Drug Donation Act would establish a program under the Board of Pharmacy pursuant to which pharmacies, hospitals, nursing homes and drug manufacturers and distributors could donate legend drugs to qualifying community health centers and free clinics. The community health centers and free clinics that elect to participate in this program would, in turn, be allowed to dispense those drugs, pursuant to valid prescriptions, to medically indigent patients.

This legislation has no fiscal impact on General Fund revenues.

Vice Chair Broadsword queried if **Senator Bock** had checked with the Department of Health and Welfare about this program as it was her understanding nursing homes that have prepackaged individual dose medications that are unused when a patient dies are returned to the pharmacy and the Department receives a rebate.

Senator Bock deferred to former **Representative Henbest** who stated this legislation would not preclude the rebate from continuing.

MOTION

Senator Coiner moved to print RS18672. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

RS18647

Relating to Restrictions on Public Benefits

Senator LeFavour stated this legislation simply adds lawfully present persons with any type of immigration service document that validates their presence under refugee or asylee status to the list of eligible groups for public benefits. Including these groups will allow them to assimilate more quickly, and allow them to access services that help their families survive the transition period, while they await full citizenship.

There should be no negative impacts on the general fund upon implementation of this legislation.

MOTION

Senator McGee moved to print RS18647. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

RS18561C1

Relating to Insurance and Public Safety Officers

Senator Jorgenson stated public safety officers who are totally and permanently disabled in the line of duty, lose the health care benefits provided by their agency. The financial burden placed on the families in these already stressful situations can be overwhelming. The intent of this law is to provide a one-time payout of \$100,000 to help families to

replace lost income and offset some of their increased expenses. A one-time payout is necessary to prevent being offset by PERSI, Social Security, and Workers Compensation benefits.

There is no fiscal impact to the state, county or city general funds. This will require public safety officers to increase their PERSI contribution rate by .04%.

MOTION

Vice Chair Broadsword moved to print RS18561C1. The motion was seconded by **Senator LeFavour**. **The motion carried by voice vote.**

RS18664

Relating to Basic Daycare License

Senator Corder stated 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 minimum health and safety standards for day care centers with thirteen or more children, but does not provide licensure for providers with fewer than thirteen. This legislation would extend licensing to all providers who receive compensation and care for four or more children, with specific exceptions maintained. Basic requirements include: criminal history background checks; health, safety and fire inspections and restrictions; on firearms, alcohol and tobacco use. Minimum standards for infant CPR and first aid training are specified. This act establishes staff-child ration recommendations consistent with nationally accepted standards and provides for fees to be established based upon the number of children.

The Health and Welfare Department will serve as the portal or administrator for the program. The Department will contract for the inspection services, receive and compile complaints and provide for a one-stop application process.

There is no impact to the general fund. There will be additional oversight from the Department of Health and Welfare but this legislation provides for the actual costs of administration to be passed to the providers. Fees to the providers are on a sliding scale based upon the number of children.

MOTION

Senator LeFavour moved to print RS18664. The motion was seconded by **Vice Chair Broadsword**. **The motion carried by voice vote.**

RS18661

Relating to Notice of Transfer or Encumbrance of Real Property

Robert L. Aldridge, Attorney, Trust & Estate Professionals of Idaho, stated when a person applies for and receives medical assistance

(Medicaid) to provide for long-term-care services such as nursing home care, they are restricted in their ability to give away their property without receiving fair market value.

Sometimes, after qualifying for medical assistance, an individual or his representative, through a power of attorney or other authority will sell the real property without using the proceeds to pay for the individual's ongoing care or to repay Medicaid as required by law. This may happen innocently, because of ignorance of legal requirements because of misunderstanding, or may be an attempt to avoid Medicaid recovery laws.

This legislation permits the Department of Health and Welfare to record a "request for notice" relating to the real property of a Medicaid recipient to assure that the Department receives notice if the real property is being sold or encumbered. This will permit the Department to be aware of the transfer and advise the seller of the potential consequences of the transaction, or to prevent the seller from diverting the proceeds of the sale in a manner contrary to Medicaid recovery laws. It is not, itself, a lien or encumbrance on the real property, but only provides for notice to the Department. The legislation also provides for a termination of such request for notice.

This bill will have no negative fiscal impact. It should have a positive fiscal effect by preventing improper asset transfers, thereby reducing the cost to the Department for recovery efforts where property is incorrectly transferred, either intentionally or ignorantly. It should also allow recovery in cases where the proceeds would otherwise be dissipated and no practical recovery could be made.

MOTION

Vice Chair Broadsword moved to print RS18661. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

RS18676

Relating to the Idaho State Board of Pharmacy

Dr. Larry Munkelt, Director of Pharmacy, St Alphonsus Regional Medical Center, stated the Board of Pharmacy consists of four pharmacist positions and one public member. The changes in Pharmacy Law being requested will achieve two purposes.

First, to provide assurances for adequate representation on the Board of Pharmacy by defining the composition of the Board members. There are three major professional areas of pharmacy to be represented, Chain store, retail, independent retail, and hospital pharmacy. The fourth pharmacist position may be filled by an additional member of one of these major segments of the profession or from a smaller segment (e.g., researchers, consultants, long-term care, home infusion, etc.).

Secondly, the proposed changes add the Idaho Society of Health-

System Pharmacists to the Idaho State Pharmacists Association as the two recognized professional pharmacy organizations in the State of Idaho. Each of these professional organizations will have the opportunity to submit a list of qualified applicants to the Governor whenever a vacancy occurs. The Governor remains free to choose replacement Board members from these lists or from other sources.

Chairman Lodge asked if this RS was brought before the Board of Pharmacy. **Mr. Munkelt** responded, it wasn't. **Chairman Lodge** asked if it was correct that the Board of Pharmacy met two weeks earlier and he was in attendance. **Mr. Munkelt** responded yes. **Chairman Lodge** queried why didn't he bring this before the Board of Pharmacy at that time. **Mr. Munkelt** replied he was ill advised by his mentor and did not anticipate Board support. **Chairman Lodge** stated when she spoke with Mr. Munkelt a month ago she specifically asked him to work with the Board of Pharmacy. She then voiced disappointment that Mr. Munkelt had not done so, as it does effect the Board. She then stated this committee does not settle turf wars.

Vice Chair Broadsword stated she agreed with **Chairman Lodge** that those most effected by this should be present in any discussions and a recommendation should come from the Board.

MOTION

Vice Chair Broadsword moved to send RS18676 back to the Sponsor. The motion was seconded by **Senator Hammond** . **The motion to send RS18676 back to the Sponsor carried by voice vote.**

RS18683C1

Relating to Health Care Treatment and Consent

Steve Mallard, President and Chief Executive Officer of the Idaho Hospital Association, stated the purpose of this legislation is to provide a system whereby withdrawing or withholding treatment to developmentally disabled persons could be allowed if continued treatment would be futile or inhumane.

The legislation creates a voluntary process whereby physicians or surrogate decision makers may ask a hospital ethics committee to determine whether it is medically appropriate to withhold or withdraw treatment. If the ethics committee determines that it is medically appropriate to withdraw or withhold treatment, the patient or surrogates will be given time to transfer care to another willing provider.

Amendments also resolve issues that have caused concern or questions over the years, including identifying emancipating events that allow minors to consent to their own care, clarifying the hierarchy for surrogate decision makers, confirming that health care providers may still utilize DNR's (do not resuscitate) on behalf of the patient..

There is no fiscal impact to the general fund.

MOTION

Senator Darrington moved to print RS18683C1. The motion was seconded by **Senator Hammond**. **The motion carried by voice vote.**

RS18711

Relating to Optometrists

Larry Benton, representing the Idaho Optometric Physicians Association, stated this legislation amends the existing Optometry Practice Act to allow optometrists to utilize diagnostic laser technology in the practice of optometry. It also removes outdated language and clarifies the Idaho State Board of Optometry's authority to regulate the practice of optometry.

There is no fiscal impact to the general fund.

Chairman Lodge asked if this had been reviewed by the Board of Optometry. **Mr. Benton** responded yes.

Senator Hammond asked if it was stated in this legislation that laser could only be used by the optometrist for diagnostic purposes and not surgery. **Mr. Benton** replied that is correct. It specifically excludes the use of a therapeutic laser

MOTION

Senator Hammond moved to print RS18711. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

RS18701

Relating to Insurers and Organizations offering Health Care Contracts

Vice Chair Broadsword stated the purpose of this legislation directs health benefit plans providing coverage for cancer chemotherapy treatment, to provide coverage for prescribed, orally administered anti-cancer medication on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits.

Orally administered Chemotherapy medications offer many benefits to cancer patients, including experiencing fewer side effects than intravenously administered anti-cancer medications and the flexibility to take them from home.

There will be no impact to the state general fund.

MOTION

Senator LeFavour moved to print RS18701. The motion was seconded by **Senator Coiner**. **The motion carried by voice vote.**

RS18713

Relating to Changing Health & Welfare Board Meeting to Quarterly

Chairman Lodge stated this legislation reduced the number of mandated Board of Health and Welfare meetings from once every two (2) months to once every quarter. The majority of information provided to the Board occurs through electronic and postal mail. Since the 2006 legislation requiring meetings every two months, the volume of formal business conducted by the Board has not been such to warrant its frequency in meeting. This will have no effect on the ability of the board to conduct special meetings, and will not interfere with its performance of duties.

The elimination of two required meetings annually will result in an estimated reduction in operating expenses of \$5000 and personnel costs of \$2200. Funding for the Board of Health and Welfare is sixty percent (60%) from the General Fund and forty percent (40%) federal dollars. This legislation will result in an estimated \$4,320 savings to the state General fund.

MOTION

Vice Chair Broadsword moved to print RS18713. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

RS18700

Relating to Health Care Policies

Senator LeFavour stated currently in Idaho, insurers offering spousal coverage to the insured are not required to extend the same coverage to unmarried couples, even at the employer's request. While some insurers are honoring the employer's request, some are not. This legislation will create greater consistency in insurance benefit implementation for insurers, employers, and employees and will allow employers, not insurers to set their own policies regarding benefits and insurance.

Senator McGee commented this seemed like a broad policy decision that is often discussed with the health care task force. He then asked if there was a reason this was not brought before the task force? **Senator LeFavour** responded she did have a discussion with one of the co-chairs of the task force and they were open to the possibility that this is a fairly small technical change which is already provided by most insurance. This is to insure that they continue to offer this when it is requested.

MOTION

Senator Coiner moved to print RS18700. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:02 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 17, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, and Bock

MEMBERS ABSENT/ EXCUSED: Senator LeFavour

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

MOTION **Vice Chair Broadsword** moved to approve the minutes of February 2, and February 3, 2009. The motion was seconded by **Senator Bock**. **The motion carried by voice vote.**

S1076 Relating to the Idaho Conrad J-1 Visa Waiver Program and the National Interest Waiver Program

Mary Sheridan, State Office of Rural Health & Primary Care, Department of Health & Welfare, stated the purpose of this bill is to amend Title 39, Health and Safety, Chapter 61, Idaho Conrad J-1 Visa Waiver Program, to establish National Interest Waiver criteria for physicians. A National Interest Waiver provides a mechanism for a foreign physician pursuing a change in immigration status to stay in the United States in exchange for a commitment to practice medicine to an underserved population for a three to five year period. The National Interest Waiver requires an attestation from the states' Department of Health and Welfare to the U.S. Bureau of Citizenship and Immigration Services. Idaho communities may only apply for the placement of a foreign physician after demonstrating their inability to recruit an American physician, and all other recruitment/placement possibilities have proven to be unsuccessful.

This bill also modifies the Idaho Conrad J-1 Visa Waiver Program, Section 39-6111(4), to allow physicians to show proof of eligibility for an Idaho license as part of the application criteria. Successful completions of the residency or training program and an unrestricted license to practice medicine in the State of Idaho are conditions for employment.

The administration of a National Interest Waiver Program in Idaho will be funded by receipts generated from levying a processing fee of \$350 for each application received. At the beginning of each state fiscal year, the cost to administer the program will be reviewed and may be revised at the discretion of the Director of the Department. The Department estimates that one application will be processed from communities in FY 2009. The processing fee will support the time of staff and other associated costs to review and process the application. Other than the obligatory fee, there are no federal or state funds to support this program. There is no impact to the general fund.

Senator McGee commented in his community of Nampa and Caldwell they are constantly looking for physicians. This offers an opportunity, as long as these folks that are abiding by all the federal and immigration laws, to bring more quality physicians to rural areas.

Senator Hammond stated he echoed Senator McGee's comments. He then asked, regarding language in the statement of purpose which states, "the unrestricted license to practice medicine in the State of Idaho", are they coming to Idaho with a license to practice and is the state of Idaho honoring that license or are they granting a license? **Ms. Sheridan** responded a valid Idaho medical license would have to be issued to practice medicine. Idaho requires the foreign physician to complete a U.S. residency program before eligibility. **Senator Hammond** asked if that was a three or one year residency? **Ms. Sheridan** responded she was not sure.

Chairman Lodge asked how many physicians are serving in Idaho at this time? **Ms. Sheridan** responded currently through the J-1 visa labor program three licenses have been issued. One physician has completed their three year service obligation and two are still in the three year service obligation. One is a Psychiatrist in Pocatello and the other is a family practice physician in Blackfoot. **Senator Hammond** queried how many areas in Idaho are designated as underserved? **Ms. Sheridan** responded currently 96.7% of the state of Idaho is a designated shortage area for primary care and 100% of the state has a federal designation as health professional shortage area for mental health.

Vice Chair Broadsword asked for clarification of the language that states, "for a three to five year period". **Ms. Sheridan** replied the three year obligation is the requirement of a J-1 Visa Waiver Program and the five year requirement is for the National Interest Waiver Program. **Senator Coiner** inquired about the third physician that completed the program. **Ms. Sheridan** replied she was in Glens Ferry and she has left the state of Idaho.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Senator McGee moved to send S1076 to the floor with a do pass recommendation. **Vice Chair Broadsword** seconded the motion. **The**

motion carried by voice vote.

PRESENTATION

Roy Eiguren, Lobbyist, on behalf of US Ecology Idaho, an American Ecology Corporation (AEC), Idaho Operations, provided a brief overview of the state and federal legislation that governs the activities of the facilities. AEC operates within two segments, operating disposal facilities and non-operating disposal facilities. In Idaho the operating disposal facility is located near Grand View, Idaho in Owyhee County. There is also a rail transfer facility located in Elmore County.

In 1983 the legislature adopted the Idaho Hazardous Waste Management Act which was necessary to allow the state of Idaho to receive the delegation authority from the federal Environmental Protection Agency under the federal statute known as RCRA (Resource Conservation and Recovery Act). RCRA is a very comprehensive piece of legislation that regulates every aspect of the hazardous waste process for the country.

The sponsor of the 1983 state legislation was **Senator Darrington**.

In essence the state HWMA provides a process by which the state may adopt the very comprehensive rules that regulate hazardous waste. The Department of Environmental Quality administers the rules.

Over a period of time work has been done with the legislature to provide amendments to the Hazardous Waste Management Act (HWMA). The Act provides for a tipping fee, which is a tax or fee, that is imposed on every ton of waste disposed at the Grand View facility. The legislature sets fees by statute in the HWMA. The fee distribution is 5% to the host county, for emergency response programs, and 95% to the general fund. In 2004 the tipping fee aggregated approximately 1.1 million dollars per year. Currently there is a sliding fee scale schedule which generates approximately 3.2 million dollars per year for the State and Owyhee county.

Mr. Eiguren concluded and introduced **Steve Romano**, Chairman and Chief Executive Officer, American Ecology and US Ecology.

Mr. Romano stated he appreciated the opportunity to update the committee. He said the company believes it is important to operate their business with transparency and that it is an honor to do business in Idaho. AEC is a national company that conducts business in all 50 states. The Companies main operations are in Idaho, Washington State, Nevada and Texas.

AEC is publicly traded on the NASDAQ exchange and has been in the business of handling hazardous and low-level radioactive material since 1952, longer than any other company in the United States.

AEC has 252 employee's in ten states, 116 are here in Idaho.

US Ecology Idaho is the former Envirosafe Services of Idaho which AEC purchased from Envirosource Technologies in 2001.

AEC is headquartered in Boise, is a financially sound company and came out of last year with a fourth successive year of record operating income, and have no debt on the books or lawsuits or permit violations against them.

Mr. Romano stated the amount of waste taken in at the Grandview facility each year fluctuates in the range of 1 to 1.2 million tons. The 2008 U.S. Army Kuwait project brought 7300 tons of lead and depleted uranium contaminated sand waste to the facility in Grandview. The radiation levels that were contained are what the Nuclear Regulatory Commission considers an unimportant quantity of source materials.

Mr. Ramano thanked the committee and introduced **Don Reading** to provide an overview of the economic impact study for American Ecology Corporation.

Don Reading, PhD, Vice President and Consulting Economist, Ben Johnson Associates, Inc., provided an overview of American Ecology Corporation's economic impact stating a \$59 million dollar annual contribution to the Idaho economy.

Chairman Lodge, on behalf of the committee, thanked the participants for the presentation.

PRESENTATION

Kathleen Allyn, Administrator, Division of Behavioral Health, Idaho Department of Health and Welfare, thanked the committee for the opportunity to present an update.

The division of behavioral health includes the Substance Use Disorders Program, Mental Health for both adult and children programs, as well as two state psychiatric hospitals.

In the interest of time **Ms. Allyn** stated a brief presentation would be given focusing on two major areas. Substance Use and Mental Health would be given by **Bethany Gadzinski**, Bureau Chief of Substance Use disorder, and **Scott Tiffany**, Bureau Chief of Mental Health.

Bethany Gadzinski gave a brief presentation of the significant changes and funding shifts that have taken place for substance use disorder programs..

A new services contract with Business Psychology Associates (BPA), was signed in November, 2008. The focus and scope of services were narrowed to include performance metrics and BPA now has the responsibility of training providers. The contract also includes a six and twelve month assessment follow up of post discharge clients to determine need.

A Prevention/Intervention Service pilot program has been successful over the past two years and will be expanded. The Prevention/Intervention program is a combination of Project Toward No Drug Abuse and support group sessions. This program is delivered by treatment professionals and is funded through the contract with Benchmark, Prevention Management Services.

The Department of Health and Welfare (IDHW) and the Idaho Department of Corrections (IDOC) with existing resources, developed and implemented in September of 2008 a coordinated re-entry process called

the Prison Re-Entry Project. To date 979 clients with substance abuse disorders have been served at a cost of \$594,821.

IDHW in partnership with Idaho Department of Juvenile Corrections (IDJC) and the county level detention centers have worked to serve more youth with substance use disorders.

The Gain Implementation is a common assessment for substance use disorder. All publically funded treatment providers are mandated to use the Gain. The web-based version of the GAIN is accessed through the new Behavioral Health Data System.

The IDHW received a federal grant last year to implement two new Child Protection Drug Courts. These were implemented in Twin Falls and Pocatello and to date have served thirty-eight adults and thirty-six children. A Child Protection Drug Court will be added in Lewiston in 2009.

Scott Tiffany provided a brief overview of the Adult and Children's Mental Health Services programs.

The adult mental health program target population, which is defined in rule, has eligible disorders that include schizophrenia, schizoaffective disorder, bipolar disorder, severe and recurrent major depressive disorders, delusional disorders and other lasting psychotic disorder. A psychiatric disorder must substantially interfere with basic living, social, vocational or educational skills.

Available services are group and individual psychotherapy, medication prescribing, monitoring and adjustment, psychosocial rehabilitation, psychoeducation, case management, mobile crisis units, Assertive Community Treatment (ACT) teams, court-ordered treatment and hospitalization. Adult clients enrolled in the division of Adult Mental Health Services average between 4,000 to 4,500 clients at any point in time.

Mr. Tiffany stated accomplishments in the division of Adult Mental Health includes, Mental Health Courts that are operating consistently around 90% capacity, up from 70%. A process for statewide policy and procedure development, standardizing core business practices, has been initiated. In addition the division has obtained a federal grant for the purchase of tele-mental health equipment which will be used to provide psychiatry from Boise to Lewiston and Boise to Idaho Falls. Several meetings throughout the state will have the hospital discharge meetings using this equipment. Clients discharged from the hospital will meet the providers who will follow their progress on an ongoing basis in the region without having to pay for travel and time. With the elimination of travel a conservative estimate of savings is \$60,000 dollars annually.

Mr. Tiffany stated the Division of Adult Mental Health has ten major goals they look to accomplish in the upcoming fiscal year. First and foremost the completion and implementation of a comprehensive statewide data system. The Division will continue to increase focus on quality and adherence to policies and standards.

The Children's Mental Health program eligibility follows requirements in statute and requires an Axis 1 Diagnosis and impaired functioning. Impaired functioning is measured by the Child and Adolescent Functional

Assessment Scale (CAFAS). Services provided by division staff include case management, assessment, treatment planning, crisis intervention, limited psychotherapy and psycho-education and court ordered treatment.

Services provided by contract or Medicaid providers is mental health therapy, psychiatric hospitalization, respite care, family support services, residential care, treatment foster care, court-ordered treatment, medication prescribing, monitoring and adjustment.

The forecasted number of clients that will be served through the Children's Mental Health Program is 3,084.

Accomplishments of the Division of Children's Mental Health program are increased ability to use data to improve client outcomes; partnerships are strengthened with the juvenile justice system; and a statewide quality assurance process has been initiated.

Goals of the Children's Mental Health Program are to continue to use data, including client outcome data to enhance outcomes; strengthen statewide quality assurance program to ensure adherence to policies and standards; and continue to collaborate with juvenile justice agencies by working together to serve children.

Chairman Lodge thanked all participants for the informative update and presentations.

ADJOURNMENT Chairman Lodge adjourned the meeting at 4:39 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 18, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Hammond, Smyser, LeFavour, and Bock
- 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.
- MINUTES:** **Chairman Lodge** called the meeting to order and welcomed guests and participants.
- MOTION** **Senator LeFavour** moved to approve the minutes of February 4, 2009. The motion was seconded by **Vice Chair Broadsword**. **The motion carried by voice vote.**
- PRESENTATION** **Lois Tupy**, Executive Director, Love Inc, stated more than 135 Love Inc. affiliates in 30 states are helping more than one million people in need each year through nearly 9,000 churches, 6,000 community agencies, and more than 300,000 volunteers. Through Love Inc., caring Christians are providing help, hope, and God's love to neighbors in need.
- Love, Inc. enables churches in a community to coordinate resources and services so those in need are not turned away.
- As churches join together, communities see exciting results. Church members use their unique gifts and talents through specific, manageable opportunities to serve people in need receive immediate and long-term help. Local churches work together, across denominational lines, modeling unity, and lives and communities are transformed.
- Love, Inc. represents a network of churches working in unity to love their neighbors. They are reaching the real needs of more than 7,000 people each year through life skills training, affordable housing, job training, day care, transportation, parenting resources, and more. And through caring relationships they are offering the greatest gift of all which is hope.
- Love, Inc. is 100% funded by donations.
- Chairman Lodge** thanked Ms. Tupy on behalf of the committee for the inspirational presentation.

PRESENTATION

Russell Duke, Director for Central District Health Department, Food Safety Program, stated the food establishment act *Title 39, chapter 16*, created the licensing and inspection program and provided the Department of Health and Welfare the authority to establish health and sanitation aspects through administrative rules.

Rules are in IDAPA 16-0219, which is called the *Idaho Food Code*. The last major revision was approved by the Legislature in 2005. The laws and rules are under the Department of Health and Welfare. Public Health Districts are delegated the responsibility and the authority to enforce those rules.

The annual cost to local public health for the food safety program is approximately \$2.8 million. The Department is authorized to collect a little less than \$600,000 dollars per year through license fees. The balance comes out of state and local tax.

A memorandum of agreement with the Division of Health outlines each agency's responsibility.

Recently there has been public discussion regarding how, in the Division of Health, to perform inspections so there is one central location that oversees the process.

The Division of Health would standardize at least one inspector in each of the Public Health Districts to insure implementation of the program and make certain within each district the inspections are performed uniformly and consistently statewide.

The Division of Health has approved the inspection form to be used by all seven Health Districts. The form is not only a statewide use form, it is also recommended by the National Conference on food Protection.

There are forty-nine specific risk factors outlined on each form. Of those, twenty-six are considered critical to food safety. Out of compliance or noncompliance with regulation has a high likelihood of presenting through food borne illness and immediate threat to public health.

The Division of Health has five individual categories for reporting: a) improper temperature; b) improper cleaning and sanitizing; c) food not from an approved source; d) improper hygiene; and e) active managerial controls.

Of all inspections performed, approximately 9,000 food establishments, on an annual basis, 60% pass with no critical violations. On the flip side, 40% have one or more critical violations, which in many instances are corrected on site or within ten days.

There is more to the Food Safety Program than onsite inspections. Other considerations are office space, computers, software, vehicles, fuel for the vehicles, and staff training. Also staff takes care of several thousand phone calls per year from food establishment operators with questions about food safety or follow up on a past inspection. This is a service the division provides on a daily basis. The Food Safety Division also responds to hundreds of food safety complaints from the public. Sometimes these can be resolved over the phone, however, frequently this requires an onsite followup inspection.

Mr. Duke in closing stated the Food Safety Division staff does a commendable job balancing education efforts with enforcement obligations.

Tom Schmalz, Program Manager, Food Safety Program, Public Health District 4, provided a graphic overview of food borne illness causes, effects, and prevention.

Members of the committee discussed with **Mr. Schmalz** personal experience with food borne illness.

Chairman Lodge thanked both **Mr. Duke** and **Mr. Schmalz** for the informative presentation.

RS18655 Relating to the Idaho Community Health Care Access Program

Chairman Lodge asked for unanimous consent to send RS18655 to Judiciary and Rules Committee for print and then be referred back to Health and Welfare Committee for further action.

MOTION **Senator Darrington** moved to send RS18655 to Judiciary and Rules Committee for print and then be referred back to Health and Welfare Committee for further action. The motion was seconded by **Vice Chair Broadsword**. **The motion carried by voice vote.**

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 4:17 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 19, 2009

TIME: 3:00 p.m.

PLACE: Room 117

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

MEMBERS ABSENT/ EXCUSED: Senators LeFavour, and Bock

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

MOTION **Vice Chair Broadsword** moved to approve the minutes of February 5, and February 9, 2009. The motion was seconded by **Senator McGee**. **The motion carried by voice vote.**

PRESENTATION **Brent Reinke**, Director, Idaho Department of Correction, and co-presenter **Dr. Mary Perrin**, Division Chief, Education and Treatment, Idaho Department of Correction, gave a brief overview and update of the Department's achievements in 2008.

Director Reinke and **Dr. Perrin** answered questions from various committee members.

Chairman Lodge on behalf of the committee thanked **Director Reinke** and **Dr. Perrin** for the presentation.

ADJOURNMENT **Chairman Lodge** adjourned the meeting at 3:39 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 23, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: Senator Smyser

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

MOTION: **Senator Bock** moved to approve the minutes of February 10, 2009. **Vice Chair Broadsword** seconded the motion. **The motion carried by voice vote.**

S1111 Relating to Insurance and Public Safety Officers

Senator Jorgenson stated public safety officers who are totally and permanently disabled in the line of duty lose the health care benefits provided by their agency. The financial burden placed on the families in these already stressful situations can be overwhelming. The intent of this law is to provide a one-time payout of \$100,000 to help families replace lost income and offset some of their increased expenses. A one-time payout is necessary to prevent being offset by Public Employee Retirement System of Idaho (PERSI), Social Security, and Workers Compensation Benefits.

There is no fiscal impact to the state, county or city general funds. This will require public safety officers to increase their PERSI contribution rate by .04%.

Senator McGee queried the mechanics of the deduction. **Senator Jorgenson** replied it would be an additional .04% PERSI payroll

deduction. **Senator McGee** asked if this deduction was optional or mandatory. **Senator Jorgenson** replied mandatory and applies to all public safety officers as defined by *Idaho Code* and covered by PERSI. **Senator Coiner** questioned why the .04% percent was only mentioned in the Statement of Purpose and not the actual legislation. **Senator Jorgenson** deferred to **Don Drum**, Executive Director, PERSI. **Mr. Drum** explained an adjustment would be made to the employee contribution rate to include the additional .04%. **Senator Coiner** asked if this would be a separate fund and if so how long would it take to be funded? **Mr. Drum** answered it would be a benefit addition to the overall fund. Actuarial studies to determine if the contribution rate of .04% is covering the cost over time will be done and the rate will be adjusted as necessary. **Vice Chair Broadsword** questioned if the .04% is not in statute what is the basis for the amount? **Mr. Drum** responded this was a good question and that he would have to check with the Deputy Attorney General where the best place would be to address the .04%. **Senator Darrington** commented the .04% would not be dedicated as specific to the benefit then asked if that was correct. **Mr. Drum** responded that was correct.

Senator Bock stated another way of handling this would be to make sure all public safety officers had health insurance through the State system. **Senator Jorgenson** replied that had been a consideration. **Senator LeFavour** commented as she understood and **Senator Jorgenson** clarified, various public safety officers are aware there will be variability in the .04% rate, then asked was this established in advance? **Senator Jorgenson** responded it was. He then referred the committee to line 36, page 1, number 5, of the legislation which states, "It is the intent of the legislature that this benefit shall be funded solely by public safety officers in perpetuity, and not by an employer, as defined in section 59-1302(15), *Idaho Code*." **Senator Jorgenson** then said a death benefit fund was created eight years ago and this benefit becomes part of that fund.

Michael Kane, representing the Idaho Sheriffs Association (ISA), testified the ISA strongly supports this legislation. He said this legislation is a mirror image of the death benefit legislation passed eight years ago, and a gap has been identified. Public safety officers killed in the line of duty have resources available to the family, however, these resources and benefits do not apply if the public safety officer is permanently disabled. In many cases the impact to the families of permanently disabled officers is more significant.

Mr. Kane said, the money provided to these families will help with the issue of health insurance for family members. **Mr. Kane** stated they looked at monthly benefits and at health insurance, however, that turned out to be prohibitively expensive for many reasons. This was the best way assuming a \$1000 per month for 100 months to cover health insurance for family members is about the amount of time needed to raise the kids.

The cost associated with providing a benefit, as determined by the Board,

shall be paid solely by the public safety officers. What this means is the Board will set up a mechanism to make that happen. The .04% noted in the fiscal note is a projection based on what the actual's are currently saying.

It is recognized that it might be .05% at first or higher or lower in the long run but the PERSI Board will actually work through a rule, a temporary rule, to get this started on July 1st of this year, but ultimately it will have to come back to the committee to make that happen. That's how the death benefit is funded.

Mike Walker, Vice President, Professional Firefighters of Idaho, stated the organization fully supports this legislation. **Mr. Walker** thanked **Senator Jorgenson** for the five years of dedicated hard work to bring this important legislation forward. **Mr. Walker** then stated the Idaho Fire Chief Association also supports this legislation.

This legislation will provide the benefit to those public safety officers who put themselves in harms way for others safety.

The Professional Firefighters of Idaho membership believes that families of permanently disabled public safety officers, injured in the line of duty, should not have to endure the financial burden in addition to the physical, mental and emotional burdens experienced.

The Professional Firefighters membership is 100% supportive of funding this bill in perpetuity. It is a gesture towards their brotherhood and sisterhood.

Joel Teuber, Legislative Committee Chairman, Idaho Fraternal Order of Police, stated when someone is permanently disabled they are basically moved to retirement wages. This legislation is a stop gap measure to help offset the tough financial times associated with permanent disability and is designed to help get the family through. He then asked the committee to support this legislation.

Bill Augsburger, Chief of Police, Nampa Idaho Police Department, testified in support of this legislation. **Chief Augsburger** then related the story of fellow Officer Allen Williamson who several years ago was shot four times by a gang member during a foot chase.

The Department retired Officer Williamson two years ago. He did not want to retire but could no longer work. He is still in recovery. The City of Nampa currently is paying Cobra premiums for the family until statutory limitations run out. There are four children in the Williamson family and health insurance is a constant worry.

Senator Jorgenson in closing thanked **Chairman Lodge** and the committee for consideration of this important legislation.

MOTION

Senator Darrington moved to send S1111 to the floor with a do pass recommendation. **Senator Bock** seconded the motion. **The motion carried by voice vote.**

S1113 Relating to Notice of Transfer or Encumbrance of Real Property

MOTION **Senator LeFavour** moved to send S1113 to the floor with a do pass recommendation. **Vice Chair Broadsword** seconded the motion. **The motion carried by voice vote. Senator Coiner will sponsor the Bill.**

S1117 Relating to the Board of Health and Welfare

Dick Armstrong, Director of Health and Welfare, stated prior to the 2006 legislation that reorganized its Board, a series of reports were prepared on various aspects of the Department of Health and Welfare by the Office of Performance Evaluations. Then Governor Jim Risch instructed the Director to correct the deficiencies. The Board has made significant progress and now find the meeting frequency in statute is not needed. Additionally, the Board wishes to save time and costs involved.

The elimination of two required meetings annually will result in an estimated reduction in operating expenses of \$5000 and personnel costs of \$2200. Funding for the Board of Health and Welfare is sixty percent (60%) from the General Fund and forty percent (40%) federal dollars. This legislation will result in an estimated \$4,320 savings to the State General Fund.

MOTION **Senator Hammond** moved to send S1117 to the floor with a do pass recommendation. **Senator McGee** seconded the motion. **The motion carried by voice vote.**

H45 Relating to Psychologists

Roger Hales, Attorney, representing the Idaho Bureau of Occupational Licenses, on behalf of the Board of Psychologist Examiners, stated this bill amends and repeals existing law relating to psychologists. H45 will revise provisions relating to exemptions from licensure; to revise a provision relating to notice requirements for board meetings; to revise provisions relating to powers of the board; revise provisions relating to qualifications for licensure and to increase the application fee cap; revise provisions relating to the revocation, suspension, restriction and discipline of a license; revise certain fees, revise provisions relating to qualifications for licensure; revise certain fees and to revise provisions relating to continuing education requirements for certain psychologists seeking licensure; and will increase the license renewal fee.

There is no impact of the General Fund. These changes would increase the caps for applications and renewal. Fees would need to be

established by board rule to impact the Bureau's dedicated fund.

MOTION

Senator Bock moved to send H45 to the floor with a do pass recommendation. **Vice Chair Broadsword** seconded the motion. **The motion carried by voice vote. Senator Bock will sponsor the Bill.**

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:15 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February 24, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

MOTION **Vice Chair Broadsword** moved to approve the minutes of February 11, 2009. **Senator Bock** seconded the motion. **The motion carried by voice vote.**

S1114 Relating to Health Care Treatment and Consent

Kris Ellis, representing the Idaho Health Care Association, stated this legislation is the result of a large collaborative effort facilitated by the End of Life Coalition. This coalition consists of hospitals, nursing homes, intermediate care facilities, health care associations, clinicians, social workers, and patient advocacy organizations. This legislation is supported by the Idaho Hospital Association, the Idaho Medical Association, the Idaho Health Care Association and other advocacy groups that have been involved in this legislation.

The major impetus of this legislation is dealing with developmentally disabled clients. Currently, in the law, those clients are not allowed the same freedom to make decisions that other patients are allowed. If they are developmentally disabled clients, they are required to be kept on life support regardless of their wishes or their family. This legislation addresses concerns as well as other unanswered questions associated with this statute.

Amendments would allow withdrawing or withholding treatment to developmentally disabled clients if continued treatment was futile or inhumane. The creation of a voluntary process whereby physicians or

surrogate decisionmakers may ask a hospital ethics committee to determine whether it is medically appropriate to withhold or withdraw treatment. If the ethics committee determines that it is medically appropriate to withdraw or withhold treatment, the client or surrogates will be given time to transfer care to another willing provider.

Issues addressed in these amendments will resolve identifying emancipating events that allow minors to consent to their own care, clarify the hierarchy for surrogate decisionmakers, confirm that health care providers may still utilize do not resuscitate (DNR), and it will confirm that surrogates may execute Physician Orders for Scope of Treatment (POST) on behalf of the patient.

Senator Darrington queried this legislation pertains to any person not just developmentally disabled clients, is that correct? **Ms. Ellis** responded that was correct.

Dr. Kevin Clifford, M.D., St. Alphonsus, testified in support of this legislation.

Dr. Wendi Norris, M.D., Idaho Pulmonary Associates, testified in support of this legislation.

Steven Millard, Idaho Hospital Association, testified the Idaho Hospital Association is in full support of this legislation.

Kelly Buckland, Director, State Independent Living Council, testified in support of this legislation.

Marilyn Sword, Executive Director, Council on Developmentally Disabled, testified although this legislation is a compromise, it is an improvement over the existing law.

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

Vice Chair Broadsword moved to send S1114 to the floor with a do pass recommendation. **Senator LeFavour** seconded the motion. **The motion carried by voice vote. Chairman Lodge** will sponsor the bill.

S1115

Relating to Optometrists

Larry Benton, on behalf of the Idaho Optometric Association, stated this legislation amends the existing Optometry Practice Act to allow optometrists to utilize diagnostic laser technology in the practice of optometry. It also removes outdated language and clarifies the Idaho State Board of Optometry's authority to regulate the practice of optometry.

There is no fiscal impact to the general fund.

MOTION

Senator Hammond moved to send S1115 to the floor with a do pass recommendation. **Vice Chair Broadsword** seconded the motion. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on S1115. **The motion carried by voice vote.**

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:52 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: February, 25, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

Senator LeFavour moved to approve the minutes of February 16, 2009. **Senator Bock** seconded the motion. **The motion carried by voice vote.**

S1110 Relating to Restrictions on Public Benefits

Senator LeFavour stated this legislation adds lawfully present persons, with any type of immigration service document that validates their presence under refugee or asylee status, to the list of eligible groups for public benefits. Including these groups will allow them to assimilate more quickly, and allow them to access services that help their families survive the transition period, while they await full citizenship.

There should be no negative impacts on the General Fund upon implementation of this legislation.

Senator Darrington commented when people apply for health benefits through Health and Welfare, the information is processed through a national data base system that confirms or denies eligibility. If this system is successful, why is this legislation necessary? **Senator LeFavour** replied immigration policy is complex. There are many different forms of immigration documents an individual can have in various steps of the process, regardless of how they entered the United States.

This legislation insures individuals lawfully in the United States that do have the appropriate documentation to qualify for benefits. It prevents

refugees lawfully in the United States from being denied access to services that those unlawfully in the United States can not access.

Senator Darrington asked if this legislation allows individuals, denied benefits, to override the verification system. **Senator LeFavour** stated she was not certain of the sequence of events in relation to the verification system used. Whether with documentation it is not necessary to go through that system, or whether the documents are used as a backup check to that system, or whether that system is the first line the Department uses. **Senator LeFavour** added **Director Armstrong** indicated in an email that he was fine with the legislation as written.

Senator Bock stated asylee status differs from refugee status. A refugee is an individual whose status has been established when they are in a foreign country, and usually come into the United States well documented. An asylee is an individual that has fled persecution in a foreign country.

For an asylee to obtain the documentation to cover their status they must go through a lengthy process to apply for asylum. This process can take up to three years. During this waiting period, even though they are here legally, pending the review of the application, they have no proof that they have a right to be here.

Once the asylum application is granted they would be able to prove they have the right to stay here permanently. But they would not have the documents that currently exist that we refer to in current statute. The denial that you mentioned could conflict with their immigration status.

Senator Hammond, referring to page 2 of the legislation relating to the requirements of an applicant in terms of identification, stated it appears most of the forms of identification are forms that a United States Citizen would have. He then asked are we adding opportunity, for an individual that is not a citizen, to access services otherwise not provided to non-citizens? **Senator LeFavour** replied before a refugee is able to become a United States citizen there is a great deal of paper work and process to go through. The intent of the original legislation was not to exclude individuals from services that are lawfully in the United States.

Vice Chair Broadword commented rules were passed this session dealing with immigrants receiving services, she then asked did the rules not cover this issue? **Senator LeFavour** deferred to **Maria Andrade**.

Maria Andrade, Attorney, Andrade Law Office, stated she has been an immigration lawyer in Boise for twelve years. Responding to **Vice Chair Broadwords** question, she said the rule refers to the I-94 documentation. This is an identification card issued prior to departure from the foreign country that indicates the individual is being legally admitted into the United States as a refugee.

The way that this is unnecessarily restrictive is the asylee's have status or will be recognized in the United States as having asylee status but do not

receive an I-94 card.

One of the ways to acquire an I-94 card would be to apply for asylee status. For example, an individual enters the United States unlawfully, applies for asylee status and during the pendency of the application there is no status. Current legislation prevents someone in this situation from receiving benefits.

Upon successful application, asylee status can be granted by the Bureau of United States Citizenship and Immigration Service (CIS), an Immigration Judge of the Executive Office of Immigration Review, or the Board of Immigration Appeals which is the Appellate Body that reviews the decisions of the Immigration Judge.

Even though an individual has entered the country without permission, the moment the Board or the Judge or the CIS adjudicator says they are approved, they will have lawful asylee status in the United States. Asylee status granted by a Judge is in letter form and not an I-94 card. An asylee under this scenario would not receive an I-94 card.

If an individual enters the country with an I-94 card and their asylee status is pending but they want to leave the country and come back they may be issued an advanced parole document. An advanced parole document grants the individual permission to leave the United States and return lawfully.

An advanced parole document could state the individual is a refugee that is not yet legalized to become a lawful permanent resident but it is not an I-94 card.

The current Rule omits these individuals that would otherwise have legal status and would qualify for benefits. This omission is corrected through this amended legislation, section B.

Senator Hammond queried how many asylee's enter Idaho each year? **Ms. Andrade** responded she did not know. However, Boise was designated as a refugee resettlement community a number of years ago and the number of refugees has increased dramatically in the last nine years.

Senator Bock commented a permanent resident is someone who has established his or her right to be here. A permanent resident is on track to become a citizen, after five years, and has a prominent right to stay in the United States. A permanent resident who is not a citizen can obtain a drivers license, they can obtain all of the documents in section b. These documents except for a passport are documents a permanent resident can obtain. Once the asylee's application has been approved the asylee has a right to become a permanent resident as soon as that paper work is done. Sometimes there is a delayed process.

Vice Chair Broadsword indicated on page 2 of the proposed legislation lines 34 through 38, individuals have to have legal permanent residence

status or be lawfully present in the United States to qualify for benefits. She then asked how does an individual prove they are here lawfully if they do not have documentation? **Senator Bock** responded even though their case may be pending and even though the Immigration Judge has signed an order, a document cannot be issued that states the individual is here lawfully. It does not exist.

Chairman Lodge asked if that is because the individual is here unlawfully? She then said Ms. Andrade stated individuals were in the country unlawfully and then applied for refugee status. **Senator LaFavour** answered the only individuals addressed in this legislation are individuals in the United State lawfully. The intent of this legislation is to make certain that the individuals that are in the country and in Idaho lawfully are allowed the ability to access these services. There are asylee's waiting for lawful acknowledgment of refugee status and they are not included. The individuals that have achieved an order from the Judge and have fulfilled the requirements are the individuals with lawful status and are the only ones included here.

Vice Chair Broadsword asked regarding page 2, line 32, which states "requiring the applicant to provide a valid social security number that has been assigned to the applicant", how do they get a social security number if they do not have documentation indicating they are here legally?

Senator Bock replied some individuals have applications that have been pending for three years. While the application is pending these individuals have a right to have an employment authorization document. Once they get the employment authorization document they can then obtain a social security number even though their file indicates they have not been adjudicated.

Senator McGee commented regarding Senator Hammond's question earlier, asked how many of these individuals are there and what is the potential pressure on the budget. **Senator LeFavour** responded all individuals were eligible for services until last year. There was a brief period of time when they were not eligible. Her sense was they were not calculated into any budget that excluded them. Eventually, they get their papers, they do get their residency and eventually citizenship.

There is a period of time during acclimation when they come into the country and they are trying to get settled, trying to get work, trying to drive to a job, where this has been an impediment for some. Frankly our budgets really do take into account that period of time when they really were eligible for these services.

Senator Hammond asked why the effort is being made to provide services to individuals that are not yet citizens of this country? **Senator LeFavour** replied when the United States grants asylee status it is the intent of the United States to allow them to become a citizen because we as a country have set forward certain conditions under which we want to protect people from atrocities in other countries. They are in the process and it is the intent to make them citizens and this is just at a point when they are lawfully in the United States and the previous legislation really

sought to exclude those who are not lawfully here.

These individuals are here lawfully and they are in that process and we do not want to give them disadvantages in their acclimatization, the settlement of their families and the ability to work and commute and function in the community.

Chairman Lodge inquired if there were any services that are provided by the federal government for these refugees? **Senator LeFavour** replied there are some services provided, of which some require repayment. There are also nonprofit organizations. One of the largest impediments is lack of access to assistance, for example to obtain a drivers license. **Chairman Lodge** commented she knew an individual that came into the country illegally had a drivers license with his name on it, had a social security number in his name, and did not ever get legal status. This individual went to several immigration attorneys, paid tons of money and never did get the paper work through.

Senator LeFavour stated individuals can obtain drivers licenses in other states and there are ways that people get drivers licenses. The intent of this legislation is to make sure individuals lawfully in the United States are able to be considered as lawfully in the United States under Idaho law. The piece of legislation that Senator McGee passed sought to exclude only those who are not lawfully in the United States from these benefits and this category, not those who are lawfully in the Country and in our State.

Senator Smyser asked if individuals have three to five years of benefits available to them with this legislation? **Senator LeFavour** replied without asylee status they would be unable to access these benefits. **Senator Coiner** asked if with this legislation would allow these individuals to obtain drivers licenses? **Senator Bock** replied, "yes."

MOTION

Senator Coiner moved to send S1110 to the floor with a do pass recommendation. **Senator Bock** seconded the motion.

Vice Chair Broadsword commented she had no doubt there is a need for this. However, she is concerned there may be a fiscal impact and asked that information be provided by the Department of Health and Welfare.

Senator LeFavour asked that the email from Director Armstrong be part of the record. **Chairman Lodge** agreed then asked if **Senator LeFavour** would like to read it. **Senator LeFavour** replied yes. **Senator LeFavour** read the email aloud. **Chairman Lodge** observed Director Armstrong did not address the fiscal impact and unless this is specifically asked it will not be provided. **Senator LeFavour** stated she agreed and would request the information from the Department of Welfare as well as some of the refugee organizations.

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 3:45 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 2, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock
- MEMBERS ABSENT/ EXCUSED:** Vice Chair Broadsword
- 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.
- MINUTES:** **Chairman Lodge** called the meeting to order and welcomed guests and participants.
- Senator Bock** moved to approve the minutes of February 17, 2009. **Senator Darrington** seconded the motion. **The motion carried by voice vote.**
- Senator Bock** moved to approve the minutes of February 18, 2009. **Senator Hammond** seconded the motion. **The motion carried by voice vote.**
- PRESENTATION** Report on the Stimulus Package and How it will affect Idaho
- Amy Castro**, Legislative Budget & Policy Analyst, provided to the committee an overview presentation of the stimulus package and the effects on Idaho.
- Ms. Castro** answered questions by members of the committee that sought clarification on various budget line items.
- H123** Relating to Public Assistance and Welfare
- Leslie Clement**, Administrator, Medicaid Division, Idaho Department of Health and Welfare, stated the American Recovery and Reinvestment Act recently passed by Congress and signed by the President provides an adjustment to the federal matching assistance percentage (FMAP) to Medicaid which results in the federal government funding a greater share of our costs. It does not provide funding for growth.
- While the increases in the FMAP helps to avoid further Medicaid budget cuts, it does not relieve the State of the need to move forward with its plans to reduce costs and provide for a sustainable program.

The proposed changes in H123 include reductions in reimbursement and benefits to align with Medicaid's budget constraints.

Changes include both short-term and on-going reductions. Short-term approaches that stop inflationary adjustments were made to reflect that the Medicaid budget was not provided with inflationary adjustments in the Governor's 2010 budget. The on-going reductions intend to provide for sustainable cost controls.

Changes proposed are reductions in nursing home rates, a freeze on intermediate care facility rates, freeze on physician and dentist rates, removal of non-emergency medical transportation for Basic Plan participants, and the addition of disproportionate share payments to the hospital assessment calculation.

The fiscal impact would be \$10,357,300 reduction to the General Fund, and \$18,552,200 total fund reduction.

Steven Millard, representing the Idaho Hospital Association (IHA), complimented state Medicaid leadership for working with the Association to mitigate the impact of these cuts, and then said IHA is not opposing the cuts.

Mr. Millard stated hospitals understand the economic climate and the need to be part of the solution, however, would ask that when times are better, consideration must be given to the restoration of the cuts including the new disproportionate share hospital (DSH) methodology.

Robert Vande Merwe, on behalf of the Idaho Health Care Association (IHCA), stated the IHCA also appreciated the state Medicaid leadership for working with them on negotiating a cap they can live with. It will be painful as 80% to 90% of their patients are medicaid patients.

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 send H123 to the floor with a do pass recommendation. **Senator Hammond** seconded the motion. **Senator Smyser** stated pursuant to Rules of the Senate 39 (H), of the Idaho State Legislature, she has a conflict but still wishes to vote on H123. **The motion carried by voice vote. Chairman Lodge will be the sponsor of the bill.**

ADJOURNMENT

Chairman Lodge adjourned the meeting at 4:31 P.M..

Senator Patti Anne Lodge, Chairman

Joy Dombrowski, Secretary

Joann Hunt, Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 3, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

MOTION **Senator Bock** moved to approve the minutes of February 23, 2009. **Senator Coiner** seconded the motion. **The motion carried by voice vote.**

S1109 Relating to Pharmacists

Senator Bock stated The Idaho Legend Drug Donation Act would establish a program under the Board of Pharmacy pursuant to which pharmacies, hospitals, nursing homes and drug manufacturers and distributors could donate legend drugs to qualifying community health centers and free clinics. The community health centers and free clinics that elect to participate in this program would, in turn, be allowed to dispense those drugs, pursuant to valid prescriptions, to medically indigent patients.

Senator Bock explained this legislation consists of three parts. First it identifies the entities that can donate unused drugs, it identifies the kinds of entities that can accept the donation, and it identifies to whom these drugs can be prescribed.

Senator Bock noted in discussions with the Board of Pharmacy, the Executive Director of the Board of Pharmacy and representatives from Medicaid have resulted in some language changes. The changes are in section 2, page 1, line 27, deleting "or other licensed"; and in line 28, delete "medical facilities".

In section 3, page 2, line 18, following "verifiable" insert "lot number"; in

line 25, following “entities” insert “that licensed or registered in the state of Idaho”; in line 26, delete “licensed in the state of Idaho; in line 27, following “Hospitals” delete “” insert “and”, delete “or other licensed medical facilities”; and on page 3, following line 2 insert “(9) “Nothing in the Idaho legend drug donation act shall prohibit or restrict the return of unused prescription drugs to the Idaho medicaid program pursuant to rules promulgated by the Idaho department of health and welfare.”

This legislation has no fiscal impact on General Fund revenues.

Senator Bock commented the Seattle Post Intelligencer newspaper article circulated to the committee suggests that the donation of drugs is problematic. He then said, “This type of scenario is precisely the issue we are working to avoid. This legislation provides a safe method of re prescribing a surplus of legend drugs available.”

Former **Representative Margaret Henbest** testified in support of this legislation.

Vivian Lockary, President-Elect, Idaho Public Health Association submitted written testimony in support of this legislation.

Pat Lazare, Chairperson, Legislative Committee, Idaho Nursing Association testified in support of this legislation.

Karl Watts M.D., Founder and President, Genesis World Mission, and Garden City Community Clinic, testified in support of this legislation.

Senator Coiner queried if Dr. Watts knew the volume of drugs this legislation would generate. **Dr. Watts** responded he did not know what the volume would be, however, in discussions with hospitals and other health care facilities the indication has been that there are thousands of dollars of medication per month that are disposed of that could be recycled and given to qualifying facilities for redistribution.

Susie Pauliot, Chief Executive Officer, Idaho Medical Association, testified the Association is strongly in favor of this legislation.

Denise Chuckovik, Executive Director, Idaho Primary Care, testified in support of this legislation.

Mark Johnston, Executive Director, Idaho Board of Pharmacy, thanked **Senator Bock** for inviting the Boards to participate in the end stages of drafting this legislation, providing an opportunity to address the Boards many concerns.

The statutory mission of the Idaho State Board of Pharmacy is to promote, preserve and protect the health and welfare of the public.

The Board feels very strongly that indigent members of the public deserve the same safety standards as non-indigent residents.

Realizing that the Board will be tasked with promulgating rules to further define areas of serious concern, such as the transfer, distribution, storage and dispensing of these donated drugs, the board will not stand opposed. **Mr. Johnston** stated because this issue surfaced so rapidly and our preliminary study of other state's programs, found very few who have established working programs, who we could learn from, the Board still has enough concerns over safety that we cannot support this bill. The Board of Pharmacy will stand: not opposed.

Lastly, if approved, the Board would be tasked with promulgating rules, establishing and implementing the program, and providing technical assistance to entities that participate in the program. Obviously, the Board does not know the complete fiscal impact of this, but there certainly will be an impact on the Boards already stretched staff and budget.

Senator LeFavour asked, "If states have passed this in previous years, wouldn't you expect that by the time the Board is promulgating rules that rules will have been promulgated in other states?" **Mr. Johnston** responded yes, the brief research that was done in this area indicated a majority of the states were in the rule promulgation process. **Vice Chair Broadsword** queried if the Board anticipated producing a temporary rule to avoid waiting until the next legislative session for this bill to take effect? **Mr. Johnston** replied he had not been approached with this question to date, so he has not proposed it to the Board and did not have an answer.

Senator Bock, in closing, thanked **Chairman Lodge** and the committee. He then said he appreciated **Mr. Johnston's** presence and participation. In the interest of full disclosure, the statement of purpose indicates this legislation does not have an impact to the General Fund, however, as **Mr. Johnston** pointed out, the Board of Pharmacy will have to use its dedicated funds to promulgate the rules and continue a monitoring and compliance process with respect to the program. The fiscal note will be revised to reflect the cost involved in promulgating rules and monitoring the program.

Senator LeFavour commented the fiscal note could be positive factoring in the cost savings in long term cost to medicaid or an indigent program by implementing this preventative work under this legislation. **Chairman Lodge** cautioned the importance of disclosing impacts on any state agency.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachments 1, 2, and 3).

MOTION

Senator Coiner moved that S1109 be referred to the 14th Order for amendment. **Senator LeFavour** seconded the motion. **The motion carried by voice vote.**

S1083

Relating to Food Establishments

Michael Kane, Attorney, representing the Health District Association, stated as there have been two meetings with the committee, he would not

be repeating what has already been heard. Having heard the concerns of the committee and others, what the Health District Association requests is to send this bill to the 14th Order for a proposed series of amendments.

What these proposed amendments do is lower the proposed fee increase considerably. The bill over the two year period proposes for high risk establishments, \$107.50 for the first year and \$150 for the second year.

The Health District Association has worked with the Northwest Grocers Association, which represents the majority of high risk establishments, to support this endeavor.

The bill proposes the same fee for medium risk establishments, which are 75%-80% of the restaurants and other entities, \$107.50 for the first year and \$150 for the second year.

For the temporary, mobile, or intermittent food establishments it is proposed to leave the fee at \$65.

Mr. Kane stated in closing, these are the fee amendments proposed in conjunction and discussions with other members of the industry, and noted they were retaining the two year phase in. He then said they are asking to delete language on page 3, lines 23 through 27 which applies to the intermittent and temporary food establishments as they have negotiated payment of one fee at the \$191 rate. Obviously if they are going to stay at the \$65 rate we would prefer to keep it the way it currently is now which is a fee is paid for every three events attended.

Finally, proposed language to be added as section four, page three which states, "On and after January 1, 2010, the Regulatory Authority shall review at three year intervals the cost data associated with the operation of the food inspection program as well as actions taken to increase the efficiency of such program and provide a report on same to the health and welfare committees of the Idaho legislature". (Attachment 4)

Senator Coiner queried if it would be an option to hold this legislation in committee to be brought back before the committee in a week or so? **Mr. Kane** replied that certainly was an option, however, many individuals have traveled long distances today and wished to testify. **Senator Darrington** commented he would suggest to the Chairman and the committee that if they chose to follow **Senator Coiners** suggestion, he would make the motion that this committee recommend the RS unanimously to the Judiciary Rules committee, incorporating these amendments as stated, to print. This is offered as a possibility to expedite the legislation. **Vice Chairman Broadword** asked Mr. Kane to explain why the previous differential between the high risk and medium risk amount is now revised to be the same. **Mr. Kane** replied the Board did look at this as a potential, however, by reducing the rate, it puts it at the 50% level for taxpayer paid versus entity paid.

Chairman Lodge requested that Mr. Kane explain the difference between high risk establishments and medium risk establishments. **Mr. Kane**

replied as defined on page 2, lines 1 through 5, "high risk food establishment" means a food establishment that does the following operation, extensive handling of raw ingredients; preparation processes that include the cooking, cooling and reheating of potentially hazardous foods; and a variety of processes that include the cooking, cooling and reheating of potentially hazardous foods.

The "medium risk food establishment" means a food establishment that has a limited menu of one or two main items; serves prepackaged raw ingredients cooked or prepared to order; serves raw ingredients requiring minimal assembly, cooks or prepares and serves most products immediately; or restricts hot and cold holding of potentially hazardous foods to a single meal service.

Chairman Lodge inquired if the food cart outside of the building was considered a mobile food establishment. **Mr. Kane** responded it was considered a medium risk food establishment because although it is a cart, it is permanently located. Intermittents and temporaries will move from fair to fair, or one day per week at a church, or a fraternal benevolent organization. **Chairman Lodge** queried even though the cart only operates for a few hours per day, the fee would be the same as an all day operation? **Mr. Kane** replied, yes. These types, medium risk, take as much time or more to inspect than the typical restaurant because there are two locations involved. There is the commissary where the food is kept and then there is the cart. So it includes two inspections for the price of one. **Chairman Lodge** stated it appeared unfair for twenty hours per week as opposed to full time. The fee seems high for this.

Senator LeFavour commented she understood cost recovery for inspection, however, classifications are rated by risk rather than time invested, and then asked if an analysis had been done indicating which establishments take more time than others to inspect. She also asked if consideration had been given to an analysis that focuses on size of the establishment? **Mr. Kane** replied currently if there are several food establishments, for example Albertson's, under one roof the law is one fee for that establishment which could include four or five inspections. During negotiations with industry, one of the issues discussed was how best to establish inspection fees would it be by income, by size, or square footage. As the discussions unfolded consensus was the best way to measure how to establish fees is how much time it takes to actually do the work. It often takes as much time to do a food cart with commissary, keeping in mind they are in two different locations, as it would to do a single standing licensee.

Lin Hintze, Custer County Commissioner, Board Member, Eastern Idaho Public Health District Seven, and food vendor, representing himself, testified in favor of this legislation.

Janie Burns, local farmer, representing herself, testified in opposition to this legislation. Written testimony was submitted. (Attachment 5)

Bill Brown, Adams County Commissioner, Chairman, Southwest District

Health Department, and small business owner, testified in favor of this legislation. Written testimony was submitted. (Attachment 6).

Cheryl McCord, Manager, Kuna Farmers Market, representing herself, testified in favor of this legislation.

Bill Clark, representing himself, testified in opposition of this legislation.

Senator LeFavour asked for clarification regarding page 2 line 9 of the legislation, which lists farmers markets under the “intermittent food establishment” heading in the high risk category. **Russell Duke**, Director, Central District Health Department, Idaho Department of Health and Welfare, stated they are not in the high risk category; they are separate. What this legislation is proposing is no changes to the small business operators, which is what was heard during the presentations about the farmers markets, also known as intermittents, temporaries that operate for fourteen days or less, multiple time throughout the year at events such as county fairs, and mobile units which are self contained units like a truck that is self contained and provides for hand washing, cooling, and food preparation. This legislation does not ask to change the code, rather it asks for amendment of fees for high and medium risk food establishments. **Senator LeFavour** stated she understood, prior to the language change on page two, farmers markets were exempt. **Mr. Duke** responded in the *Idaho Food Code*, which is in administrative rule, there is a definition for intermittent that includes farmers markets which are currently regulated and expected to pay the \$65 fee.

Connie Ward, Proprietor, Granny’s Farm, and Board Member, Capital City Market, testified in opposition to this legislation. Written testimony was submitted. (Attachment 7)

Bill Ward, Proprietor, Granny’s Farm, submitted written testimony in opposition to this legislation. (Attachment 8)

Karen Ellis, Manager, Capital City Public Market, and Edwards Greenhouse Market, testified in opposition to this legislation. Written testimony was submitted. (Attachment 9)

Senator Darrington queried what licenses, permits or receipt for fees paid are needed for participation at a farmers market? **Ms. Ellis** replied requirements for vendor participation at the Capital City Public Market, are liability insurance in a minimum amount of one million dollars, health department permit, and standard fees at the market such as a city permit.

Christy Sterns, owner-operator Black Canyon Elk Ranch, testified in opposition to this legislation.

Senator Smyser asked Ms. Sterns what she thought of the proposed changes. **Ms. Sterns** replied she thought the proposed changes were a step in the right direction, however, in her opinion there was still a lot of work needed.

John Berryhill, Proprietor, Berryhill & Company Restaurant, testified in opposition to this legislation.

Beth Rasgorshek, Proprietor, Canyon Bounty Certified Organic Farm, testified in opposition to this legislation.

Mike Fitzgerald, Manager, Catering Department, Table Rock Brew Pub, testified in opposition to this legislation.

Roy Lewis Eiguren, Attorney and Lobbyist, on behalf of Northwest Grocery Association (NGA), stated the amendments before the committee today are the results of a compromise fashioned by NGA working with the Health Districts Association and others.

To put it into perspective for the committee, **Mr. Eiguren** said, that there are two basic public policy issues that need to be addressed. One is whether or not the current one-third funding by private sector and two thirds funding by the governmental sector needs to be changed. It was NGA's view that it was appropriate, given the current budget crunch the State is facing to move from one-third private sector funding to a fifty-fifty split as stated in the amendments.

The second issue is the ability to pay. Testimony heard today indicated that a larger entity should be in the position to pay more. The NGA's view is that it should be based on cost of service. The numbers provided by Mr. Kane to NGA, suggest the cost of providing an inspection is approximately \$317 dollars. **Mr. Eiguren** stated he was not aware of anything that would suggest large stores are in some way unique or would require a greater amount of time relative to inspection. If that were the case the public policies that need to be addressed are whether or not there should be a greater cost to those organizations that create greater cost for the inspection. The NGA stands ready to work with this committee and all interested parties to go through that process if that is the decision.

In closing, all of the NGS stores in Idaho were asked what their experience has been with food inspectors and without equivocation invariably they have been positive. Inspectors were found to be very focused, efficient. The NGA has no problem with the inspectors.

Senator Hammond queried if the NGA would pay one fee for all stores in the region. **Mr. Eiguren** responded that was correct. **Mr. Kane** interjected, there would be one fee for each store, regardless of the number of food establishments under the one roof. **Senator Lefavour** questioned what kind of multiple entities would be under one roof? **Mr. Eiguren** replied a coffee shop, butcher, perhaps a bakery. **Mr. Eiguren** added the NGA had 63 stores throughout the state with approximately 12,300 employees.

Pam Eaton, President, CEO, The Idaho Retailers Association and Idaho Lodging and Restaurant Association, stated as she had not had the opportunity to review the newly revised proposed amendments with her

membership, she did not have input at this time. However, based on the previous proposed legislation, input from the membership was they were willing to go up to a third of the fee.

Russell Duke, Directory, Central District Health Department, representing all seven public health districts throughout the State of Idaho, indicated more resistance to the proposed legislation was anticipated and he found that encouraging. The resistance heard was from the temporaries and farmers market establishments.

Mr. Duke emphasized the amendment proposed keeps these establishments at the current fee, structure and number of events as adopted in the 2002 legislation.

The Public Health Districts currently, based on the \$317 inspection fee, charges a \$65 license fee which covers 22% of the cost to deliver service.

The original proposal included a fee discount of 33%, which is the portion of the public health district budget made up of State and county tax dollars. The balance is made up of contracts and fees. The 1/3, 1/3, 1/3 partnership agreement from 1997 was a political compromise not based on data. No contract funds are received for the food safety program.

Viewed from a realistic standpoint, 1/3 of the Districts budget is state and county funded. The balance of the budget for this program, with no contracts, should be made up with fees. However, in the interest of compromise, a 50%-50% shared partnership, excluding farmers markets, temporaries and mobiles, is proposed.

Senator Smyser asked if the Districts were inspecting fewer restaurants this year than last? **Mr. Duke** responded the Districts are required by Idaho Code to perform at minimum one inspection per year per establishment and are expecting an increase this year.

Vice Chair Broadsword referred to page 1 line 35 of the legislation that specifically states agricultural markets are not a food establishment, and on page two, added new language indicates they are an intermittent food establishment. She asked when had they started considering agricultural markets a food establishment? **Mr. Duke** replied the *Idaho Food Code* is an Administrative Rule that was approved by the legislature in 2005. The Public Health Districts enforce the rules of the Department of Health and Welfare. Agricultural markets and any exemptions or inclusions are made by the Department of Welfare. The Districts are given guidance and instruction as the delegated regulatory authority to enforce those rules. **Mr. Duke** then deferred to **Patrick Guzzle**.

Patrick Guzzle, Food Protection Program Manager, Department of Health and Welfare, working within the office of epidemiology and food protection, stated the exemption for farmers markets is interpreted to apply to vendors that are engaged in the sale of raw fresh produce and nuts in the shell and other foods that are referred to as non potentially hazardous. Foods that are potentially hazardous are foods that are known

to support growth of harmful bacteria. This interpretation of potentially hazardous foods and fresh produce is the same interpretation as every other state across the United States.

Senator LeFavour asked how are average fees in other states structured? **Mr. Duke** replied those states with lower fees were supported, other than what was covered by fees, by 100% state general funds that covered the program. **Senator LeFavour** queried how were the breakdown determinations made, which entity paid how much? **Mr. Duke** responded as presented to the food fee work group, fee structure varies from state to state. For example some are based on square footage, or seating capacity or even revenues. The direction of the work group, lobbyist, and others was to keep it simple. There are some states that have twenty or thirty different fees. From an administration stand point this would be more complex which the Department is not willing to do. The direction from the group was keep it simple so that was our effort at the three tiered fee structure. We realized that and what we are recommending is a 50/50 split for the medium and high risk establishments and leave the fees the same for the small operators. **Senator Lefavour** stated there are other options that haven't been looked at then.

Senator Bock commented regarding equity and fairness in relation to risk. Where do the food borne illnesses come from. If all cases of e-coli are attributed to fast food establishments, it should be factored into the fee structure. On the other hand if there is a disproportionate amount attributed to farmers markets, it would indicate the way these fees are allocated is appropriate in relationship to risk. Is there a breakdown that shows where food borne illnesses are coming from? **Mr. Duke** replied food borne outbreaks occur at anytime at any location, from Community Church events, which are non regulated, to some of the finer restaurants right here in Boise. It varies from year to year in spite of the best efforts to provide some level of oversight, which is minimal with only one annual inspection. Risk isn't as much based on epidemiology and trends, risk is based on the type of practice as described earlier, heating food and then cooling it and then reheating places the establishment in a high risk category because they are more likely to cause food borne illness. Most restaurants are in a medium risk category. The high risk category, about 10% of inspections, applies to delis, sushi restaurants, and restaurants with lots of fresh food that's prepared and served. Instead of discarding, the food is cooled and re-served at a later date.

Senator Bock stated his question was not answered. His point was there are various preparation methods, and those methods in and of themselves might tend to make a certain kind of food more susceptible to food borne illness. What he is not seeing, as we are talking about equity and fairness and who pays the fees, where is the breakdown as to where the food borne illnesses come fro? Where is the data that shows who presents the biggest risk to the public? It would seem that the people that present the biggest risk would be the ones that pay the higher fees. Is there a breakdown that allocates where food borne illnesses are coming from? **Mr. Duke** responded from a statewide perspective, for the most

part food borne illness outbreaks over the course of a year will occur in the various types of food establishments. Outbreaks are not all occurring in the high risk food establishment or a medium risk food establishment. Are you looking for statewide trends across the three different categories? **Mr. Wade** deferred to **Mr. Guzzle** for more insight from a statewide perspective. **Mr. Guzzle** responded he did not have the data requested with him, however, it certainly could be provided. **Senator Bock** stated the committee was being asked to vote on this legislation and the critical information needed to make the decision.

Senator McGee commented the committee had listened to testimony and it occurred to him that the committee might yield to **Senator Coiner's** suggestion at the beginning of the committee and also taking **Senator Darrington's** offer to have the bill printed. **Senator McGee** then offered to make the motion with the idea that an additional motion for unanimous consent request be made.

MOTION

Senator McGee moved that S1083 be held in committee. **Senator Coiner** seconded the motion

Senator McGee explained a sincere effort had been made with these proposed amendments. Considering the work that Mr. Duke and others have contributed, combined with concerned testimony heard, it would be best if the committee print this bill. **Senator McGee** then said if the motion passes he was prepared to make a unanimous consent request.

The motion carried by voice vote.

Senator McGee moved for unanimous consent to send S1083 with amendments to the Judiciary and Rules Committee for a print hearing.

Senator Darrington objected based on time constraints, then suggested, knowing the intent of the good Senator, to amend the Routing Slip, bring it back to the committee and then refer it to Judiciary and Rules for print.

Senator McGee in agreement with **Senator Darrington** withdrew his unanimous consent request.

Senator Darrington suggested there be a unanimous consent that the Chairman entertain the new Routing Slip for purposes of committee review and then refer it to Judiciary and Rules for print on Friday.

Senator LeFavour stated she would make a further suggestion, she felt very much like anything that would go forward out of this committee would be a temporary fix. A sunset would be preferable or an opportunity for further study of this issue and perhaps a reexamination of the structure. This new proposal asks small entities to bear the brunt of lost revenue created when this fee change was being structured. There are three instituted inequities that will be even more marked with the proposed fee changes. Within the language of the bill itself, problems have been created with using the risk categories while no other criteria was used.

This warrants further examination.

Senator Darrington suggested that by this committee agreeing to request the new RS be referred to print it does not commit the committee to the RS when it comes back in bill form.

Vice Chairman Broadsword commented that Mr. Duke and Mr. Kane have heard all the comments and as long as they are going to go to a new RS they might find other areas that they would like to correct as well. They should not be limited to just accepting these amendments but what they feel would be most acceptable to the committee.

Chairman Lodge stated she would like to echo Vice Chair Broadsword's comments and suggested to the sponsors to include all players when working on the revised amendments.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachments 4, 5, 6, 7, 8, 9, 10).

ADJOURNMENT Chairman Lodge adjourned the meeting at 5:39 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 4, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

Vice Chair Broadsword moved to approve the minutes of February 19, 2009. **Senator Coiner** seconded the motion. **The motion carried by voice vote.**

S1112 Relating to Basic Daycare Licensing

Senator Corder in his opening statement thanked **Chairman Lodge** and the committee for the opportunity to present legislation relating to child care licensing and that both he and co- sponsor **Representative Saylor** appreciated the input last year to this bill that took a good bill and made it a superb piece of legislation. He also thanked the Department of Health and Welfare and others for their participation.

Questions raised in the past by the committee will be answered during the presentation.

Senator Corder stated the attached amended language provided by the National Rifle Association (NRA) was inadvertently overlooked by him when preparing the draft legislation. He asked the committee for consideration of the revised language that will be inserted on page 6, section 9, in place of lines 27 and 28 of the printed bill. Should the committee decide to approve this legislation, he requested they send it to the 14th Order so amendments can appropriately be added to S1112. (Attachment 1)

Senator Corder finalized his opening statements and turned the presentation over to cosponsor **Representative Saylor**.

Representative Saylor expressed appreciation for the opportunity to return to the committee with an improved version of this legislation. He indicated they had worked through the committees issues as well as other issues that came forward and have satisfied the concerns of other parties.

Being involved in this issue over the last several years, he witnessed the evolution and gained an understanding of what is developing in Idaho, a vision for childcare. There are two parts to this vision.

The first is a set of minimum, consistent, stabilized safety standards. Safety and health standards would be in place and could be enforceable, which the State is currently lacking.

The second is a voluntary effort to develop a system of quality care built on cooperation between parents and providers. It would build on collaboration with, and utilization of organizations like Idaho Stars or the Idaho Child Care program which would engage parents and providers in the partnership that would allow them to take advantage of the resources that are available to improve quality care.

Parents would still make the choice that is most important and appropriate for their families and within their rights and responsibility. There would also be resources available to provider facilities and the other organizations and the assurance that there are some consistent safety standards in place.

Representative Saylor provided a summary of, and reviewed line by line with the committee, changes to the legislation. (Attachment 2)

Chairman Lodge inquired why the age of the child changed from 12 years of age to 13? **Representative Saylor** responded it conforms to administrative practice and it also avoids a criminal back ground check of a 12-year-old.

Senator Bock stated the definition of daycare facility on page 3, lines 7 and 8, is a place or facility providing daycare services for compensation. Is the intent of this legislation to specifically address only daycare services that are provided for compensation? **Representative Saylor** replied, yes. Care that is temporary or is a family member is not targeted. This legislation addresses child care as a business.

Senator Bock asked regarding the local option section 8, lines 2, and 3, the language states, and is enforcing its ordinance, what kind of evidence would cause the enforcement of the municipality's ordinance that would avail the municipality of this option? **Representative Saylor** replied it would be determined by actions taken in response to verified criminal complaints.

Senator McGee referenced page 6, section 8, line 3 and asked who determines whether or not a city or county ordinance is enforced by an employee of the Department of Health and Welfare?

Representative Saylor replied he believed that to be correct. It was the Department of Health and Welfare that brought forward the concern of cities with ordinances that were not enforced. **Senator McGee** commented he was trying to envision a process of a Health and Welfare employee overriding the decision of a Chief of Police or City Attorney in terms of whether or not the City was enforcing its law. **Representative Saylor** said this was a very valid question. As stated earlier to Senator Bock, determination would be based on the kind of feedback and input that became available either through the department or local authorities in regard to whether complaints and standards were being enforced and upheld. He then yielded to **Cameron Gilliland**, Bureau Chief of Family and Community Services, Idaho Department of Health and Welfare. **Mr. Gilliland** responded if the Department were to do this it would have to be something substantive, like if the city were failing to enforce its ratio code. If the Department were to make a decision like that it would not rest in local jurisdiction. It would be the Director of the Department that would make the decision to override. **Senator McGee** asked if this would be addressed in the Rules process? Would the Department make a determination that the City of Nampa is not enforcing its day care regulations? **Mr. Gilliland** replied it would be prudent for the Department to insert language of clarification of the law in the rules. The Department would only want to implement this in extreme situations and issues that are cut and dry like a ratio issue. The Department would not want to empower itself to make an arbitrary decision over a City unless there was something that was clearly not enforced and a specific agency were violating those rules resulting in license revocation. **Senator McGee** asked if there was another example of this in state code? **Representative Saylor** stated he did not know the answer to that question. It has not been the policy of Health and Welfare to revoke licenses or to close facilities. Their intent is to work with and improve them. It would not be their intent to supercede cities' jurisdictional authority either. This does provide a basis for cities honoring the intent of the legislation.

Senator Smyser asked what are the fees for someone that is 21 years old and wants to start a daycare business? **Representative Saylor** replied listed on the handout provided there is a fee schedule. **Senator Smyser** asked for a general total ball park figure of what the cost would be for a basic daycare. **Representative Saylor** responded a ball park figure would be from \$130 to \$200 dollars for a two-year license.

Holly Koole, Idaho Prosecuting Attorneys Association, Ada County, stated they were asked to comment and provide information as to their ability to effectively obtain the data for child abuse cases and how it relates to daycare settings. The answer is they cannot do that as they do not have the means. To obtain this information, past files would have to be pulled and police reports read, case by case to see if an injury to a child occurred in the daycare setting. A code section on injury to a child can be polled but this would not give the information specific to a daycare setting.

Matt Dogali, State Liaison, National Rifle Association (NRA), stated he

was present to clarify the position on S1112. Senator Corder presented the amendment with new language, specifically section 9, line 27 and 28, the inclusion of the word stored, meets the needs of the NRA at this time. The NRA has no opinion on this legislation.

Vice Chair Broadsword asked with this amendment, the second amendment rights of our citizens would not be endangered were they to carry a concealed weapon on to the premises? **Mr. Dogali** replied that was the interpretation of the NRA. If an individual is otherwise lawfully allowed to possess a firearm at that time, being on the premises should not be an issue legally.

Mark Larson, Idaho State Fire Marshal, stated he was asked to comment and provide information on his level of involvement in this legislation. He said he had been discussing these changes with the group for some time. There were misconceptions in the earlier daycare laws that the child/staff ratios were driven by the fire code. The child/staff ratios are driven by other standards. The fire code speaks to the building, its construction, use and how to protect that not how the business is conducted inside the building. The one number that does come from the fire code is the occupant load factor which looks at the square footage of space available for daycare and determining how many children can occupy that space. That number is 35 square feet per child.

Michael Kane, Attorney, representing the Health Districts, stated the Health Districts are the people on the ground implementing the health care inspections on these entities. The Health Districts are in support of this legislation. On page 8, section 10, lines 16 through 39, are what the Health Districts perform. The Health Districts were delegated the responsibility of inspections. Presently there is a \$65 dollar fee for a 20 year old starting a daycare. By rule, Health and Welfare divides this fee between the Fire Marshal, the Health Districts and the background checks. Where we are now is the Health districts receive about \$35 dollars, and every two years the Health Districts for subsequent inspections, receives \$30 dollars . This does not begin to cover actual costs. The Health Districts approached the sponsors and the response was the inspection would be pulled back into the hands of Health and Welfare. This would relieve The Health Districts of the responsibility and as Representative Saylor remarked, a system would be set up whereby the Health Districts if they felt they could do it financially could bid. The Health Districts recognize that this is a good thing for the State of Idaho and believe the current ratio for children is not good. Page 12 line 34 refers to nondelegable duties and responsibilities is language from the Health Districts. The Health Districts wanted this language because they did not want to go back to Health and Welfare to set the rules and delegate it back to us.

Mr. Kane addressed Senator McGee's question of whether or not there was another example in state code. There is a law, which is, if the Governor determines that the Sheriff is not enforcing the law or not doing his job, can appoint the head of the State Police who will then run the county. **Senator McGee** remarked, "in this case you are talking about the

Governor who has been elected by the people of Idaho who can come in and make that determination.” He then said as much as he liked Cameron, and thinks Cameron is a swell guy, he didn’t know that Cameron should have the same power to make that type of determination. There are similarities but there are differences in those two cases. He then said he could tell Mr. Kane was trying to come up with one. **Mr. Kane** stated he didn’t know of any other law on the books in Idaho.

Kristen Friend, Witness Coordinator, Special Victims Unit, Idaho Prosecutor Attorneys Office, Ada County, testified in favor of this legislation.

Chairman Lodge asked, “Is parental consent required for a juvenile criminal history check?” **Ms. Friend** replied no.

Annie Henna, Legislative Advocate Intern, Catholic Charities of Idaho, testified and provided written testimony in favor of this legislation. (Attachment 3)

Senator Darrington commented he had received many emails from individuals requesting government to get out of their lives. “What does this legislation do for those individuals?” **Ms. Henna** replied she could not answer what the legislation does for those individuals, however, this legislation does protect Idaho children in daycare institutions. There is a time that government needs to step in and set standards just like other consumer areas. This is an area that is thoroughly lacking. **Senator Darrington** stated government regulates toys, car seats, fabrics, cribs and the list goes on and on. He then asked, “What is next?” **Ms. Henna** replied she could not answer that question.

Kimberly Hoffman, former home daycare provider, testified on behalf of herself and her husband, Wayne Hoffman, in opposition of this legislation. Mr. Hoffman provided written testimony. (Attachment 4)

Chairman Lodge inquired how many children did Ms Hoffman have in her day care? **Ms. Hoffman** replied in the beginning she was able to care for six children, then five and in the end, four children. **Chairman Lodge** noted Ms. Hoffman was making less than minimum wage caring for these children then asked how much would she have to pay Ms. Hoffman to care for one child, and is the rate based on the age of the child? **Ms. Hoffman** replied the rate was higher for infants under one year of age. Ms. Hoffman indicated she closed her daycare in 2005. At that time rates were \$17 dollars per day. Discounts were offered for families with multiple children that attended bi-weekly or monthly. **Chairman Lodge** calculated, based on four children at \$17 dollars per day, Ms. Hoffman was earning roughly \$68 dollars per day.

Karen Mason, Executive Director, Idaho Association for the Education of Young Children, testified and provided written testimony in favor of this legislation. (Attachment 5)

Bryan Fischer, Executive Director, Idaho Values Alliance, testified in opposition to this legislation.

Senator Darrington suggested sending S1112 to the 14th Order. He, having had experience with all this, said, the committee does not have a clue the turmoil that is involved. This is a nothing hearing compared to 1986. He had warned Chairman Lodge this would go on for days and they would be hanging from the rafters. **Chairman Lodge** interjected she had indicated to Senator Darrington the committee would finish by 4:30. **Senator Darrington** continued by saying this is some twenty years later and there is a difference. The current legislation was a compromise between the vast numbers of people who wanted nothing, including him, and the vast numbers of people, particularly in this valley, who wanted a bill very similar to the one before the committee today. A very bureaucratic, regulatory, daycare licensure bill.

This didn't start in 1986, it started in 1983. But nevertheless over that course of time there has been a huge evolution on the attitude of people. He has no doubt there will be some kind of comprehensive, regulatory, bureaucratic, costly, licensure bill and probably in this legislative session.

Senator Darrington then stated he had no doubt that they were at that point in society when most people expect the government to do more for them and that is just the way it is.

The great strength of the legislation passed in 1986, **Senator Crapo** was the primary author along with myself and **Senator Sweeney** who was the liaison between the committee and the Governor's office. They believed that if a city or county wanted an ordinance that was stronger than the minimum requirement in the State Plan, which was quite minimal, they could do so and that is what local control is.

It has been indicated in the press many times that local control is the weakness in that piece of legislation as is viewed today. Because the fact that someone doesn't like what a city is doing, they will go to the county and if they don't like what that county is doing, they will go into the other county. Local control can have the amount of government they do or don't want. That is viewed today as a weakness of the legislation that we passed in 1986. That is probably the greatest weakness in the legislation we passed apart from the fact that people want to get into the tiny daycare homes and regulate.

Senator Darrington said he fully recognized that public attitudes have changed and the altitudes of a lot of people have changed. People want the government to do more for them and I think the committee should just go to the 14th Order and let's have our fun. He said he was not going to make a motion. But would simply suggest the 14th Order would be appropriate under the circumstances.

Chairman Lodge commented she had concerns about the costs and limiting parents' choices. The Supreme Court of the United States has ruled the parent has the responsibility for their children. This legislation

limits some opportunities for the mother who wants to stay home to care for her children and provide care for some children in the neighborhood. She helps the working mother, she helps herself and she helps her family.

How is this going to effect rural areas, Idaho City for example. This year there have been school closures for roof repairs, furnace repairs, and the death of a faculty member. If an individual has a licensed daycare that is licensed for four children, what is going to happen to the children whose parents have to go to work? Where are the children going to go? Are they going to be left at home unsupervised, where they could be molested, or start a fire, or be involved in some other mayhem? Or, are we going to have some flexibility to cover emergency circumstances. Parents in a small community all know the local daycare and they know their children can go there for the day when the need arises.

Chairman Lodge said she would much rather have her child in a daycare that maybe had fifteen children that day, knowing even with all those children the child would be basically safe. Children need to be safe, but the responsibility rests on the parents to decide if the facility is clean. None of us want anything terrible to happen to children.

Senator LeFavour commented parents these days are under a lot of pressures. In a society where people move, work long hours, and where parents are forced to put children in a daycare facility, perhaps, in some cases, don't have the opportunity to spend a great deal of time knowing precisely what is going on at every daycare.

To provide some assurances that the daycare facility is safe and that the individuals who are operating that daycare not only intentionally act in good faith, and in the best interest of those kids, but are educated in what types of provisions they need to provide to insure that those kids are safe. This covers the bare minimum and this bill does just that. It is also possible that the committee consider clarifications of the local option section if needed. This bill is incredibly important and she applauds the sponsors. It is well past the time that those parents have these assurances.

Senator Smyser asked Representative Saylor what about a daycare provider that has 13 children a lot of which come after school. A logistical nightmare would be someday she has this family, the next day she has a different family, someone is sick they have to go to a doctors appointment, and there is another drop in. Senator Smyser said she could not imagine how this provider would be able to handle this regulatory oversight. The business would close down. There are so many home daycares in rural areas of Idaho. What about the 14 year old girl that helps after school. For example, if her 12 year old daughter would go to this daycare after school to babysit she would have to have a background check, is that correct? **Representative Saylor** replied yes that was correct if she is there on a regular basis, having direct unsupervised contact with children. **Senator Smyser** asked what is meant by "unsupervised direct contact?" **Representative Saylor** replied

direct unsupervised contact those are the words that are used in statute that require a background check. **Chairman Lodge** asked if this was defined in the bill? **Representative Saylor** replied it is not defined but it is understood by its wording to be left alone with a child without someone else there.

Representative Saylor continued in urban areas where ordinances exist providers have not been lost with exception to those that did not meet the requirements. There has been no decline in services available. Actually there are some benefits to a small provider by becoming licensed. They would qualify for the Idaho Child Care Program (ICCP) or the United States Department of Agriculture (USDA) Child and Adult Care Food Program (CACFP) which pays \$3.78 per child per day. This is a significant additional source of income. There are resources available through ICCP and the Idaho Stars Program that would enhance the quality of care that person could offer. There are benefits to it, it is certainly not intended to get hardship or to write anyone out of the provision. In visiting with the Health and Welfare department they fully recognize there are times when children will be coming and going and there may be more than X number of children in the facility at one time. This is not the concern. The concern is if a provider is operating on a regular basis with an excessive number of children that lead to unsafe conditions. The bottom line is safety. The information provided to the committee shows the crimes and abuses. Cases where 16 or 17 year olds are left alone with 15 or 20 children. This is not designed to over regulate or drive people out of business, it is designed to deal with the egregious violations that are taking place.

Senator Bock commented he appreciated the discussion of cost benefits and strongly supports this legislation. One of the things the committee obviously has to think about is what is reasonable and what is not reasonable. If we all wanted to be totally safe driving our automobiles our automobiles would look like tanks. Fortunately our automobiles do not look like tanks, they do pose an element of risk and it is accepted. With that said, there are laws that govern whether or not to drive under the influence, laws that require insurance not only for passengers but for people that one might crash with, there are a lot of laws that govern how we operate automobiles and it has been determined that those laws are reasonable. Laws that we need to make sure, as a whole, we are safer than we would be otherwise. Even at that there are several thousand deaths per year, nothing is perfect.

This bill contains some very basic safety measures that should be expected of child care centers. Not every parent has the ability nor the knowledge to be able to inspect a child care center to determine whether this place or that place is the right place for their child. It is not possible and there are instances, for example, a young boy who was of an age that would have required a back ground check under this bill, was a regular at a professionally run child care center, in an unregulated area. This child was molesting several of the children. He would have been caught if there would have been basic back ground checks in place to make certain that he did not have access to those children. These are the risks that

cannot be seen.

Senator Bock then stated he strongly supports this legislation and that he has been involved with child organization for the past two and half decades. This legislation is really important. Our children are the most important resource we have and they need to be protected.

Senator Coiner referred to Senator Darrington's remarks earlier, regarding how involved should government be, commented that he had been thinking about that crib. If you lost a child, suffocated in a crib, because their head could get out of it, and it was poorly designed, then maybe there should be standards for what a crib should look like. If you were in a car wreck with a child in a car seat and that child became a missile because of a poorly designed car seat that becomes necessary.

There are pluses and minuses to having these controls and having government involved in our lives. Unfortunately we have more of it than when the good Senator and I grew up along with having government in our lives I go back to thinking of those special Olympics again and what we have for that segment of our population because of more government. We have more programs that were totally unavailable when I was growing up. There has to be a balance and I think this is a start, a change that would give us a safer place for children in daycare in Idaho.

Chairman Lodge asked **Mr. Gilliland** if Health and Welfare would be able to go all over the state to do the work that needs to be done to fill the need of this legislation? **Mr. Gilliland** responded the Department currently licenses the daycare and childcare centers. The Department is anticipating with this bill there will be an additional 600 licenses issued over a two year period. The Department does not view this as a hardship.

The second impact to the Department involves investigations. The investigations for all licenses currently and under this bill are driven by complaints.

Presently there are two complaints for daycare licenses in a typical region. Here in Boise there were 80 complaints last year. Most complaints had to do with adult/child ratios and the lack of supervision.

With this legislation, complaints will be received for those that will now be licensed but the Department believes they receive those complaints already as the Department is the child protection agency.

The third impact to the Department will be enforcement. When the Department receives a complaint, they will investigate. If the child is being abused or at risk, the license will be suspended during the investigation and if necessary pull the license. If the daycare is meeting the licensing requirements and the child is not at risk, the Department makes efforts to work with that daycare to bring them into compliance with the law.

The Department has child welfare investigators throughout the state and does not see this as a huge burden to the program. Last year 11 licenses

in the entire state were revoked.

Senator Corder in closing stated he wished to address some points that have been raised. Section 39-1108 does not compel the state to do anything to the city, the only thing this legislation compels the state to do is enforce this law. Section one states that cities or counties may enact those ordinances more stringent not less. The only thing required is if the standards of any daycare facility were not at least as minimum to the state standards then the state is compelled to enforce the law on that daycare facility. Not the county or the city that has enacted the ordinance.

The costs within this legislation is the ability for the Department to pass those down. The Department will issue Requests for Proposals (RFP) for these services. When the RFPs are received they will begin to write rules to implement what those costs are. The ballpark figure that was given to Senator Smyser could change based on the RFPs. The anticipation is it won't be by much and it will be using private enterprise to perform some of those inspections. To the issues that there are no guarantees, there certainly aren't. This has never been represented this will guarantee every child is safe. Without this some children will be unsafe, that can be guaranteed. This bill is about serving families, staying out of family business, but providing a safe business for families to use. That's what this legislation is all about. This is a one stop shop of child care excellence.

MOTION

Vice Chair Broadsword moved S1112 be referred to the 14th Order for amendment. **Senator Coiner** seconded the motion.

Senator McGee commented he is much the same mind set as Senator Darrington. There is good in this bill no doubt about it. He said he differed with Senator Corder on this language and stated he would not support this bill on the floor unless this language is changed. Asking the Department of Health and Welfare whether or not a city or county is enforcing its ordinance is not the job of Health and Welfare. Having discussed the amendment on firearms, he could support sending the bill to the 14th Order so further discussions can be had.

Senator McGee stated he would support Vice Chair Broadsword's motion to send this bill to the 14th Order.

Senator LeFavour commented if the provisions in section 8 were removed a city could create a new ordinance just to escape this piece of code.

Senator McGee responded there is no way that he would vote for a bill that asks a Department bureaucrat to oversee whether or not a city or county are abiding by their own laws. That goes fundamentally against everything he believes in.

Senator LeFavour responded that is not what they are determining. **Senator Darrington** commented there is no sense to debate this here. When this goes to the 14th Order it's open season. The most telling thing

in this hearing today was my Honorable seat mate when he said this is a start. Every argument there is, was heard a hundred times in the 1980's and we knew this day was coming.

The motion carried by voice vote. Senator Smyser voted nay.

Chairman Lodge thanked the audience for being so accommodating and polite.

ADJOURNMENT Chairman Lodge adjourned the meeting at 5:00 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 5, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

Vice Chair Broadsword moved to approve the minutes of February 24 and 25, 2009. **Senator Hammond** seconded the motion. **The motion carried by voice vote.**

RS18822 Relating to Food Establishments

Michael Kane, Attorney, representing the Health District Association, stated this legislation amends the annual license fee for food establishments in the Food Establishment Act, *Idaho Code 39-1607*. Fees increase on some, but not all, food establishments phased in over a two-year period. The new fees are based on a four tiered system between classes of food establishments to provide equitable distribution fees and to provide additional industry funding for the safety program. The fees for food establishments increase from the current \$65 fee for some establishments over a two-year period as follows: 1). Temporary, intermittent and mobile - no change (\$65) (\$65); 2) Mobile with a commissary - (\$75) (\$85); 3) All others not included in 1, 2, or 4, - (\$95) (\$125); 4) More than two licenses on one premises with common owner - (\$107.50) (\$150).

Further, the legislation amends the definitions for the types of food establishments described in the four tiered fee system and provides for a cost and efficiency review of the program every three years.

Mr. Kane was happy to report consensus agreement had been reached among all parties regarding these amendments.

MOTION

Vice Chair Broadsword moved for unanimous consent to send RS18822 to Judiciary and Rules Committee for a print hearing.
The motion carried by voice vote.

**GUBERNATORIAL
APPOINTMENT**

Tom Stroschein of Moscow, Idaho was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2009 and expiring January 7, 2013.

Senator Darrington asked if **Mr. Stroschein** would make an absolute commitment to the committee that service on the Board of Health and Welfare will be a priority and that, with exception to personal family emergencies, he would attend all called meetings. **Mr. Stroschein** answered, yes he was committed and he would not accept the position if he were not able to fulfill the position. **Senator Darrington** stated the committee wanted to make this answer a matter of record in the committee minutes.

Senator Hammond asked what was the greatest priority the Board would face in the next few years? **Mr. Stroschein** replied funding issues on both the state and federal levels are critical. Behavioral health and drug abuse issues are his priorities.

Vice Chair Broadsword asked if the Board had participated with the Department in deliberations relative to stimulus dollars and budget cuts? **Mr. Stroschein** replied no. However, a stimulus package briefing was scheduled on the agenda for the Board's upcoming meeting.

**GUBERNATORIAL
APPOINTMENT**

Daniel Fuchs of Twin Falls, Idaho was appointed to the State Board of Health and Welfare to serve a term commencing January 1, 2009 and expiring January 1, 2013.

Senator Smyser asked what had been the biggest challenge during his eight-year tenure with the Board? **Mr. Fuchs** replied switching drug coverage from medicaid to medicare part D coverage. Hard work had been done in the state to fine tune drug coverage for the medicaid population. Rebates were negotiated from drug companies, and people switched to generic drugs saving the budget millions of dollars. When this was turned over to the federal government everything that we accomplished was thrown out and now is wasting more of our tax dollars on the federal level.

Senator Hammond asked what was his greatest priority for the Board in the next few years? **Mr. Fuchs** replied to maintain quality care for the medicaid population on the lowest budget possible. To try to take care of people even though finances are not available, by reducing waste whenever possible.

Senator Coiner queried, it was his understanding that the Fuchs family worked together. **Mr. Fuchs** replied yes, there are three brothers that work together and own five pharmacies. **Senator Coiner** commended the Fuchs family for all the time and effort dedicated to the elderly in the community during the struggle to transition to medicare part D

**GUBERNATORIAL
APPOINTMENT**

coverage.

Janet Penfold of Driggs, Idaho was appointed to the State Board of Health and Welfare to serve a term commencing January 1, 2009 and expiring January 1, 2013.

Senator LeFavour asked if **Ms. Penfold** would address commitment and attendance in relation to the Board. **Ms. Penfold** stated she was very dedicated to the Health and Welfare program. She enjoyed the meetings, being in attendance, field trips and learning new things, however, she had missed two meetings in the past year. In October she had shoulder surgery and was diagnosed in November with Bells Palsy so she did miss the November meeting.

Vice Chair Broadsword asked what had changed the most during her tenure on the Board and what are the new challenges facing the Board? **Ms. Penfold** replied when the Idaho Department of Environmental Quality (IDEQ) was split from the Department of Health and Welfare. Welfare reform was also tremendous. Getting people back to work and off welfare.

Senator Hammond asked if appointed to another term, what did she see as the major issues she will be faced with? **Ms. Penfold** replied she sees people that are more needy than they used to be. She indicated she did not know what the stimulus package had in store and that more food stamps may have to be distributed. The food bank in her county was dry and is asking for more donations of food products to feed people that do not have the means to feed their families. This is a big concern. Where is the money coming from and what is going to be done to help these families?

Senator LeFavour asked what experiences, personal dedication or volunteer work, outside of the Board position, has **Ms. Penfold** had that demonstrates her dedication to health, behavioral health, poverty or disability issues? **Ms. Penfold** replied she had served on the Region Seven Health and Welfare Board, served on the Teton County Hospital Board, and was the first female to serve on the Planning and Zoning Board in Teton County. She indicated she had never had a paying job outside the home. During that time she was able to devote time to 4-H, Boy and Girl Scouts, and girls camp etc. **Chairman Lodge** interjected one of the most important accomplishments **Ms. Penfold** has had was her success with their adopted foster child. The most important thing a person can do is to change the life of a child.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1, 2, 3).

S1127

Relating to the Idaho Rural Health Care Access Program

Mary Sheridan, Director, Idaho Office of Rural Health and Primary Care, Department of Health and Welfare, stated the purpose of S1127 is to modify the application schedule of the Idaho Rural Health Care

Access Program so that it is aligned with the Idaho Community Health Center Grant Program. Both programs are defined by statute, administered by the State Office of Rural Health, and grant decisions are made by the same board. These grant programs are established to improve access to primary medical care and dental health services in undeserved areas of Idaho.

The Idaho Rural Health Care Access Program, defined in Title 39, Chapter 59, requires us to make grant applications available to governmental and nonprofit organizations on January 15, with a due date of April 15, each year. Idaho Code, Title 39, Chapter 32, Idaho Community Health Center Grant Program, requires us to make grant applications available to health centers on July 1, with a due date of August 30, each year.

We propose to align these programs by modifying the application period dates of the Rural Health Care Access Program so they are the same as the Community Health Center grant program (an application release date of Jul 1, a due date of August 30, and one board meeting in September). We gain efficiencies since staff can prepare materials and generate contracts during the same time frame. We will recognize cost savings of approximately \$1500 per year in general funds by eliminating one board meeting per year.

If approved, we propose this legislation become effective November 15, 2009, so that eligible applicants will not submit applications in the July to August 2009 time period, since available funding will be distributed under the current statute (applications currently available and due April 15).

Senator Darrington stated there is not a paragraph at the end of the legislation that indicates the effective date, is it in the language elsewhere in the legislation? Because the effective date is automatically July 1 unless the bill states otherwise, which is frequently the case, particularly January 1, but it is not here or is it? **Ms. Sheridan** replied the effective date was supposed to be in the legislation. **Senator Darrington** said is there a problem with it becoming effective July 1st? **Ms. Sheridan** replied not really.

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 LeFavour moved to send S1127 to the floor with a do pass recommendation. **Senator Smyser** seconded the motion. **The motion carried by voice vote.**

S1108

Relating to Emergency Medical Services

Dia Gainor, Chief, Emergency Medical Services Bureau, Division of Health, Department of Health and Welfare, since the original Emergency Medical Services (EMS) Act in the early 1970's, the Idaho Legislature has recognized the importance of reasonable regulation of

the EMS system in Idaho. This regulation largely takes the form of licensing the individual personnel who care for patients in ambulances and other emergency settings through a process similar to other health care professions and licensing the entities that operate local EMS agencies. This legislation refines content in the current EMS code to include contemporary terms. Currently, all language about investigations and discipline is in rule and is outdated. The legislation also introduces provisions clarifying the EMS Bureaus authority to investigate and act against those licenses when violations of laws or rules occur, thereby protecting the public.

Vice Chair Broadsword asked who governs the Board of EMS? **Ms. Gainor** replied there are two Boards, Health and Welfare and the Idaho EMS Physicians Commission. Both Boards go through appointment processes, one of which you experienced earlier in this committee meeting and the second, the Idaho EMS Physician Commission has nine physicians and two citizens appointed by the Governor.

The Idaho EMS Physicians Commission governs scope of practice, what skills, devices, and medications personnel can use, and the standards their medical directors must follow when supervising those personnel. They make recommendations to the Department when the Department is preparing to take license action against an EMS provider.

The Board of Health and Welfare does everything else that is in our rulemaking authority.

Vice Chair Broadsword asked is it the Department of Health and Welfare that is ultimately responsible for the rulemaking that will govern this legislation? **Ms Gainor** stated that was correct. These would be Board of Health and Welfare Rules as are most of the rest of our rules.

Roger Christenson, County Commissioner, Bonneville County, on behalf of the Idaho Association of Counties, testified in support of the legislation.

Vice Chair Broadsword asked which cities and who represented them on the task force? **Mr. Christenson** replied the Association of Cities elected their own representatives, City Councilman Keith Berg, Meridian and Mayor Tom Dale, Nampa. There was an active contingent from the cities over the past three years. **Vice Chair Broadsword** commented the big cities were represented but not the little cities. **Mr. Christensen** replied they came to realize this was not a local issue. The problem is starting to expand in many of the smaller communities, pitting cities against counties, cities against cities, fire districts against both of the others. There needs to be a referee. The problem is figuring out who that referee is.

Jerry Mason, Attorney, Association of Idaho Cities (AIC), stated much of this bill updates and brings new terminology and rulemaking authority regarding the traditional role of the Bureau. What gives AIC pause and great concern is the content in subsection seven, Page 7, Section 1016,

lines 35 through 43, of the legislation. What this language does is open an entirely new chapter in the relationship between the Bureau and the serving agencies who provide services.

This service is almost exclusively provided by local governments in the State. Local governments work out the difficulties that may occur. Some work them out better than others. In the end, the decisions that are made are made by County Commissioners, City Councils, and Fire District Commissioners, who coordinate their efforts to deliver systems that work for everyone.

What this legislation could do is take the State's roll from credentialing and proving the capabilities of individuals and agencies and put them in the roll of referee sorting out who gets to do what in individual communities. This is not something that any community desires to have as its sole prerogative.

In Kootenai County, a system has been worked out that is a very functional, cooperative venture using the services of City, Fire Districts, and County. The hope is that the committee will allow all parties the opportunity to work this out. There have been some operational people involved in this discussion and as Commissioner this isn't the product of those interactions. It is the function of the agency bringing us forward. We ask to be involved and we ask the committee to hold this bill until those discussions can be had.

Vice Chair Broadsword stated she had heard from both County Commissioners and the Mayor of Coeur d Alene and they are all on opposing sides of this issue. Couldn't the Department in a negotiated rulemaking process come up with a level playing field for folks to follow no matter what county they are from or what city they're from to have some standardized methods for EMS to follow. Isn't that a possibility during rule making? **Mr. Mason** replied no, and the reason is the fiscal and operational situations are different in every jurisdiction. How agencies have taxing authority, how they have deployed it, whether there is an ambulance district, or whether there is not, whether there are full time firefighters, whether there are not, all of those shape how this equation would ultimately be solved. Many models have played out in Kootenai County with the current model being developed by trial and error, necessity and availability of resources and capabilities. **Vice Chair Broadsword** stated she heard this process was hanging by a thread, a very fine balance and it will take only one little tip to make it off. **Mr. Mason** responded if it's going to be performed by multiple agencies cooperating there is always tension. Things change, elected officials change, personnel change.

Lan Smith, Gem County Commissioner, testified in support of this legislation.

Senator LeFavour asked if it was possible to create rules that would properly and appropriately address each of the critical counties and all of the cities within them.

Mr. Smith replied this was an emotional issue. There are war stories on both sides of the issue. If it was viewed as a business, and how the best service is provided to the community, those rules could come about.

Senator Darrington asked in Mr. Smith's vast experience and knowledge was it his observation that ambulance service costs and then doesn't pay? **Mr. Smith** replied there is a low threshold tip. In most cases ambulance service costs a lot. **Senator Darrington** asked if in **Mr. Smith's** humble opinion a monetary return factor is a reason to want this ambulance service. **Mr. Smith** replied this is a service that needs to be provided even though it may not pay.

Tom Allen, Deputy Fire Chief, Nampa City Fire Department, testified in opposition of this legislation. Written testimony was provided.

Dr. Murry Sturkie, Emergency Room Physician, representing the Idaho Emergency Medicine Commission; Chairman, Idaho Medical Association EMS Committee; Idaho EMS Advisory Committee; and the Medical Director, Ada County Paramedics, testified in favor of this legislation.

Chairman Lodge asked in Dr. Sturkie's experience, what did he think EMS system costs mean? **Dr. Sturkie** replied that is an open question across the country, This is an opportunity in Idaho to look at this and say, what do we want to address? How much does it cost to send an ambulance to somebody, maintain an ambulance in the system? How much does it cost to save a life. How much does it cost to carry a defibrillator, two paramedics versus one, or one department providing two services, these are all components of how you are going to provide patient care. All of these services carry a price tag. The opportunity here is to look at those costs and to find a good cost effective measure. How will services be provided and how much will it cost.

Ron Anderson, Meridian Fire Chief, representing the Idaho Fire Chiefs Association, testified in opposition to section seven of this legislation.

Troy Hagen, Director, Ada County Paramedics, testified in favor of this legislation.

Senator Hammond questioned if he had heard correctly that the task force all agreed to, were aware of and knew section seven was part of this legislation? **Mr. Hagen** responded yes. The original version of the bill was signed off by the County Commissioners as written.

There was adamant opposition to how it was written and there was extensive discussion and debate about if there wasn't sign off, who should sign off. It was resoundingly approved and advocated that the EMS Bureau is the one that sets that level of authority, and approves or disapproves an EMS license based on objective criteria. Ms. Gainor, in that very meeting, said the objective criteria that will absolutely be used is patient outcomes, response times, and EMS system costs.

Everyone agreed to that, over any other type of local governmental sign off, which is undefined what local government sign off is, knowing that the State is the only one that could do that at this point in time.

Senator LeFavour asked regarding the statement “when we create our rules”, it sounds like a process where locals would get together and work out what would be their local set of rules is what is envisioned. However, that gets back to the question of would there be forty-four counties worth of rules, or would there be a set of rules that apply more broadly across very different situations. Are multiple versions envisioned, or how would that work? **Mr. Hagen** replied it can be accomplished. The three performance criteria can be defined. The standard will be applied differently to the various counties but the definitions would not change. As response time performance may not be vastly improved in rural Idaho where the response time is in hours or days not minutes. The definition of what response time means will be defined. The standards will be applied differently in every county in the state. Standards should be a local decision.

Senator Bock commented the reality is the only contentious issue in this legislation is section 7, everyone agrees with everything else. In light of that, why hasn't some kind of consensus been met on the language in section 7? What was the crux of the dispute over this section? **Mr. Hagen** replied there was agreement to the objective criteria knowing that it would go to a negotiated rule process. Sitting together as a task force each individual represents their association, and when they take back information to the membership some opposition can come up and that is the case in this situation. There is concern that people will apply it differently or why hasn't it happened yet as far as defining these performance criteria because everyone is looking at their own best interest defining it differently. Lets get this anchored in law, go to negotiated rulemaking and finally get the definitions in place.

Senator Hammond commented the room was full of very credible people. He said he had been approached by his county commissioners, his Mayors and has seen people on both sides of this equation, presenting very credible arguments. It is not the responsibility of the committee to split the baby. The options at this point in time are to send this to the 14th Order or hold the bill to afford more time to work together.

MOTION

Senator Hammond moved to hold at the call of the Chair S1108 in committee. **Senator LeFavour** seconded the motion.

Vice Chair Broadsword said she would be more comfortable if it were held date certain. This is a very important issue and she would not like to see anything happen due to non-agreement. Bring this bill back in a week in hopes that the parties can come together with a compromise.

Senator Darrington stated this is a turf battle and that he was in agreement with **Vice Chair Broadsword** and asked for assurance from the Chairman that this would be back to the committee the latter part of next week.

Senator McGee commented he was in agreement with Senators Darrington and Broadsword. He said **Ms. Gainor** needed leverage to make sure people negotiate this in good faith. Issuing a date, time certain for this to be back in committee would help encourage the parties to negotiate a resolve. If **Senator Hammond** would amend his motion to include a date certain, he could support the motion.

Senator Hammond asked **Chairman Lodge** what would be an appropriate amount of time.

Senator Darrington suggested that **Senator Hammond** not amend his motion but that the committee could have a declaration from the Chairman that she would have the bill back in the committee in a timely fashion.

The motion passed with **Chairman Lodge** declaring S1108 be held in committee and brought back, Wednesday, March 11th for hearing.

Senator Darrington said if the interim succeeds, it becomes pretty easy for the committee. If the interim fails, and there is at least a 50-50 chance, he was prepared to find out where the votes were.

Chairman Lodge requested of the participants to please work together and if needed, committee members would sit in. There has been success on other issues this year on very difficult issues. This will be on the agenda next Wednesday and we will have another hearing and hoped they could come to an agreement. The policy of this committee is not to split the baby.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 5, 6, 7, 8, 9).

ADJOURNMENT

Chairman Lodge adjourned the meeting at 5:00PM

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 9, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Senators Darrington, McGee, Hammond, Smyser, LeFavour, and Bock
- MEMBERS ABSENT/ EXCUSED:** Vice Chairman Broadsword and 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.
- MINUTES:** **Chairman Lodge** called the meeting to order and welcomed guests and participants.
Senator Bock moved to approve the minutes of March 2, 2009.
Senator Darrington seconded the motion. **The motion carried by voice vote.**
- GUBERNATORIAL APPOINTMENTS** **Tom Stroschein** of Moscow, Idaho was appointed to the State Board of Health and Welfare to serve a term commencing January 7, 2009 and expiring January 7, 2013.
- MOTION** Moved by **Senator Darrington**, seconded by **Senator McGee**, that the Gubernatorial appointment of **Tom Stroschein** to the State Board of Health and Welfare be reported out with the recommendation that the appointment be confirmed by the Senate. **The motion carried by voice vote. Senator Hammond** will be the sponsor of the candidate.
- Daniel Fuchs** of Twin Falls, Idaho was appointed to the State Board of Health and Welfare to serve a term commencing January 1, 2009 and expiring January 1, 2013.
- MOTION** Moved by **Senator McGee**, seconded by **Senator Smyser**, that the Gubernatorial appointment of **Daniel Fuchs** to the State Board of Health and Welfare be reported out with the recommendation that the appointment be confirmed by the Senate. **The motion carried by**

voice vote. Senator Coiner will be the sponsor of the candidate.

Janet Penfold of Driggs, Idaho was appointed to the State Board of Health and Welfare to serve a term commencing January 1, 2009 and expiring January 1, 2013.

Senator LeFavour stated in listening to the nominees some were very qualified and dedicated. Their lives focused around the issues and spend personal time. She felt the bar was not met with Ms. Penfold and indicated she would be voting no on this nomination.

Chairman Lodge remarked she has known Ms. Penfold for quite some time and was very familiar with the extensive work Ms. Penfold has done with foster children and her community. Ms. Penfold has served on many Boards.

MOTION

Moved by **Senator Smyser**, seconded by **Senator McGee**, that the Gubernatorial appointment of **Janet Penfold** to the State Board of Health and Welfare be reported out with the recommendation that the appointment be confirmed by the Senate. **The motion carried by voice vote. Senator LeFavour** voted nay. **Senator Lodge** will be the sponsor of the candidate.

S1129

Relating to the Revised Uniform Anatomical Gift Act

Ken McClure, Council, Idaho Medical Association, stated this bill amends a section of the Uniform Anatomical Gift Act which was adopted by the Idaho legislature in 2007. In one area of particular concern, the Act attempted to harmonize a patients expressed wishes to be an organ donor, which might require life support in order to preserve organs for donation, with the patients expressed wishes in a living will that unnecessary life supporting measures, excluding pain relief, not be administered merely to prolong life. The initial language of the Act, however, could have been interpreted to suggest that the organ donation would trump the living will. The original drafter of the Act, the National Conference of Commissioners on Uniform State Laws, was made aware of this interpretation and took appropriate steps to craft an amendment clarifying the Acts intention. This legislation contains that clarifying amendment. It provides that, if a patient who is an organ donor also has a document directing the withholding or withdrawal of life support systems which conflicts with organ donation, the patient (or the patients designated decision maker) and the patients attending physician must confer and resolve the conflict. This amendment reflects the principle that the wishes and needs of the patient are paramount. There is no fiscal impact to the general fund.

Senator Lefavour asked who would pay for the medical care? **Mr. McClure** responded typically that care is just a matter of a few hours, it could be a day, and who pays for the patients care would be the payor

of that care to allow for the transplant. If that is a concern, the care can be withdrawn pursuant to the living will which says no. For example, if the patient has an organ donor card but does not have insurance and is not capable of sustaining another day of life, and usually it is a day to allow time to get the transplant team in and ready, many of those costs can be borne by the recipient of the transplant organ. At times money may be an issue. Who ever is responsible for the patients care or in some cases who ever is responsible for obtaining and transplanting the organs or the other patient in the equation.

MOTION

Senator Hammond moved to send S1129 to the floor with a do pass recommendation. **Senator Darrington** seconded the motion. **The motion carried by voice vote. Senator Davis will sponsor the bill.**

S1082

Relating to Public Assistance and Welfare

Mitch Scoggins, Coordinator, Children's Special Health Program, Division of Health, Department of Health and Welfare, presented S1082 which repeals Idaho Code 56-1019, services to victims of cystic fibrosis. This law requires the Department of Health and Welfare to pay for services to persons suffering from cystic fibrosis (CF) who are twenty-one (21) years of age or older. This law was passed in 1978 with a General Fund budget appropriation of \$24,000, which was increased in 2005 to \$211,500. In the 1970's, most individuals with CF would not live to adulthood. Medical literature indicates the median life expectancy is not thirty-six (36) years of age, and many people with CF live much longer. The cost for care and treatment of an individual with CF now well exceeds the rule cap of \$18,000 annually.

Due to budget constraints, repealing this law is necessary to allow the Division of Health to meet its budget reduction goals. Repealing this law will save \$205,000 annually in General Funds for the Department of Health and Welfare.

Senator Bock asked what is the incidence per thousand of CF? **Mr. Scoggins** replied the incidence per thousand of CF in Idaho is approximately one in twenty-four hundred births.

Senator LeFavour asked what exactly do insurers cover and do they cover all of the necessary care including prescriptions? **Mr. Scoggins** replied the CF condition would be subject to the terms of the insurance policy. Medicare and Medicaid are full coverage options. A standard insurance plan such as what is available to state employees would require co-payments. There are some insurance plans available that offer 50% coverage on prescription drugs in exchange for very low premiums.

Senator LeFavour asked how much stability do drug assistance programs have? **Mr. Scoggins** replied the programs are run by the drug manufacturers. In preparation for this legislation, research of these programs indicated that as long as the drug was prescribed for CF use,

the company has never taken the program off line. All high costs like this program exist and have existed for as long as the drug has been available for CF. **Senator LeFavour** asked if the adults eliminated from this program would be covered. **Mr. Scoggins** replied the spreadsheet included in the handout provides eligibility criteria information. Almost all if not all cover uninsured, some have additional financial criteria such as 300% of the federal poverty level. The CF program currently covers insured patients.

Jim Baugh, Executive Director, Comprehensive Advocacy Inc., testified in opposition of this legislation.

Senator McGee asked Mr. Baugh to speak to the specific stimulus dollars that he suggested could be used for this program. Mr. Baugh replied he did not know if there was a specific stimulus program for CF. However, there is a fifty-three million dollar savings in medicaid through an increased federal matching rate in 2009 and seventy-three million dollar savings to the General Fund through an increase in the federal matching rate from medicaid in 2010. Out of those millions of dollars, finding two-hundred thousand dollars of General Fund money does not seem impossible.

Senator Darrington stated he did not understand that answer. He has read that legislation and that money is already earmarked for medicaid. **Senator Darrington** asked you do not buy into the argument just given to us by Mr. Scoggins that there is someplace for CF patients to go to get help. Because when he has a constituent come to him and say you take away the program how do I get help I know who I am going to call. Because they just testified to us there are avenues available with or without insurance. Can you dispute that?

Mr. Baugh replied he would admit that he did not know nearly as much about these programs as **Mr. Scoggins** does. However, he offered the assumption that the Department would already be utilizing those resources and if not, perhaps the statute does need to be changed so CF patients are able to utilize those resources and not use general fund dollars unless those resources have been exhausted or are unavailable. **Senator Darrington** commented that some of the pharmaceutical programs have been in place for many years, there is an eligibility standard and is an avenue that is open to some.

Kelly Buckland, Executive Director, State Independent Living Council, stated that if this program is eliminated, some people will be forced onto medicaid. This may set public policy that the committee does not want to set. **Mr. Buckland** was not sure if the advocates had been involved in this discussion until today and said he did not know this bill was up until today. Unfortunately he hadn't had the chance to read the RS, consequently he would not be as well equipped to answer questions. **Mr. Buckland** requested the committee hold S1082 until such a time the advocates work with the Department.

Senator Darrington commented S1082 was printed on the 12th day of

February. This has been posted to the internet and has been available to the public since that time. He then said he saw no excuse for any advocate organization not to have seen it, read it, or been familiar with it. It has been over three weeks.

Senator McGee stated there was extensive discussion on S1082 during the print hearing. He agreed with Senator Darrington that this has gone through the standard process.

Chairman Lodge stated she specifically held S1082 in committee so it would have a chance to get out and people would have an opportunity to review it.

Senator LeFavour commented on that point, however these non-profit organizations probably have ten negative pieces of legislation they are having to deal with simultaneously. The year has been particularly tense in terms of cuts to services to people with disabilities. It's not like their plate isn't full.

Mr. Buckland stated he didn't say it was anyone's fault that he hadn't had the chance to look at S1082. He said he took responsibility for that, and he was letting the committee know that he had not had the chance to look at it and hasn't been involved in the discussions with the Department.

Senator Bock commented there was some testimony to the effect that there are some people who are going to lose the benefit if S1082 passes. He then asked if there was a way this bill could be redesigned so that those people losing the benefit could continue receiving it.

Mr. Scoggins responded the Department of Health and Welfare as the payor of last resort is absolutely true when it comes to insurance. The fact that the adult CF program exists in Idaho makes the people who are on the program ineligible for patient assistance programs until such a time their benefits run out during the course of the year. When it comes to private business the payor of last resort clause within CFHP's rules have not applied whether or not we could make it apply, we would be on odd footing there. Last year a patient exhausted his \$18,000 dollars of benefits in four months, this year it took six and a half months before the first adult patient exhausted their benefits. At that point the patient went on to the drug program. Last year it was eight months, this year five and a half months of drug coverage. It works well and it is the Department of Health and Welfare's presence in this field that has stopped that private business intervention from really taking hold in Idaho the way it does in thirty one other states that do not have adult CF programs. Regarding the question of legislation Mr. Scoggins deferred to **Jane Smith**..

Ms. Smith, Administrator, Division of Health, Department of Health and Welfare, responded in a perfect world, we do not want to cut anyone. It is not a perfect world, and there are limited resources. This is one disease out of many, many diseases and conditions that people need

help with every day. The Department has carved out this little mention and in some ways we have not helped people because we have provided this little coverage and have people thinking they do not have to worry, there is a program. This little band-aid has not helped the overall program in the long run. It comes down to a matter of resources and we don't have them. Forty-six per cent of the Divisions general funds have been cut. There just are not funds available for this program. It is tough, when things are tough, we work as hard as we can to see what can be done with policy changes. Remember, clinical services are not cut. The clinical services include dieticians, physicians, social workers and they help connect people to these resources. They are not being dropped, and as they become teenagers, we start working on those transition plans.

Chairman Lodge asked if what she was saying is that because we do have the \$18,000 dollars worth of coverage that the people use that up first and then they go to these other programs. If we did not have the \$18,000 dollars worth of coverage the patient could go directly into these other programs. **Ms. Smith** replied that is the way the Division sees it, and said, remember the vast majority of patients do have insurance coverage. There are eight adults in the program that are uninsured.

Chairman Lodge commented it was a fact the states around us do not have CF coverage and seven patients have moved to Idaho, were they adults when they moved to Idaho? **Ms. Smith** replied she was not sure of the exact history, but yes those particular individuals did move as to Idaho as adults. The Department was told these individuals moved for the coverage.

Senator LeFavour asked what would the cost be if one of the adults were to receive all of their medical care through medicaid. **Ms. Smith** responded she did not know what the cost would be. Keep in mind these people have other costs, this program is paying for just a narrow little piece. People are graduating from our program at a higher rate because of the longevity. For every year that we go on, another year of longevity can be added. For example, 37 year survival rate this year, next year is 38, then 39 years. In ten years a straight line projection is an eighteen million dollar per year program not including the longevity. If you look at that projection compared to medicaid, her guess would be that medicaid may be cheaper in the long run. **Senator LeFavour** commented that she could understand that the Department looked carefully at this and figured that the federal funds that come with medicaid might be a better option. How many of these individuals could be served on medicaid? **Ms. Smith** replied the Division had not looked at that specifically.

Chairman Lodge asked if these individuals would go straight to the available national programs where they would get the medications and services that they need? **Ms. Smith** replied the Division is comfortable the patients could be funneled into those services. However, there are no guarantees in life, so she could not say for certain that no-one would

ever fall through the cracks. **Chairman Lodge** commented she was impressed with the comments from the Cystic Fibrosis Patients Assistance Foundation which said they had designed the program to specifically meet the needs of the CF community, making them unique among national patient assistance programs. **Ms. Smith** said there are some very committed people working with this group.

Chairman Lodge asked how many of the adults in this program have children? **Ms. Smith** responded CF is a recessive gene the chances are not extremely great unless both adults are afflicted with CF. However, a family having one CF child could very easily have another or many more.

Senator Bock asked are there limits to the pharmaceutically sponsored programs? **Ms. Smith** replied she was not sure what the limitations were. The limitations the Department is familiar with are when benefits through the Department are available, the pharmaceutical company won't step in until those benefits are exhausted. **Senator Bock** asked if those programs have a maximum benefit? **Ms. Smith** responded she was not sure but their ceiling was probably not as low as the \$18,000 ceiling the Department has.

MOTION

Senator McGee moved to send S1082 to the floor with a do pass recommendation. **Senator Darrington** seconded the motion.

Senator McGee stated he had listened to a similar discussion during the print hearing. Listening to Ms. Smith, Ms. Spencer and all the Health and Welfare people involved with this bill, they are professional state employees, and if there was anything else they could do, they would be doing it. This certainly has been reflected in their comments. The most interesting thing heard today was the 46% cut in their budget this year, almost half the budget is gone. He stated he has been very impressed with the efforts made, going above and beyond to find alternative programs and treatments for these Idahoans. A binder of material that indicates all the work done by the Department to find alternative treatments for Idahoans with CF. This is symbolic of the spirit of Idaho. The Department's budget has been cut, they could have walked away, but what was done is a safety net has been found. So often potshots are taken at state employees, but what a great example for all state employees to follow. Having the confidence that Health and Welfare if going to help these people find their needed services, he will vote for this legislation not only in committee but on the Senate floor.

Senator Hammond commented the issue for him is not the issue of providing services for CF patients it is a greater policy decision. How is it that this disease and a couple of others get state help while literally hundreds of other diseases do not. It doesn't make sense. The crux of this issue is that there wasn't a policy decision made years ago. Some diseases had an advocate who took legislation through to provide additional help for them while others did not have that kind of advocacy. That is not the way to do public policy. There are adequate other sources to take care of the people and we as government ought not to be doing what other folks can provide.

Senator LeFavour said she is not convinced that this bill is going to save money. The leaking raft is being pushed off the sinking ship and leaving people on their own, in a way that provides no assurances. She thinks the Department could have done better.

Chairman Lodge commented the Special Health Program through St. Lukes is not leaving people on a leaking raft. They have help for examinations and consultation, by a CF physician, consultation by respiratory therapists, nutrition consultation, care coordination and nursing services and the ability to work with a licensed social worker if needed. Plus the help of the Department of all these other sources where help is provided. Situations like this are never easy. It is never easy to cut a program that people depend on, but the Health and Welfare Department and St. Lukes will do everything possible to assist these people.

The motion carried by voice vote. Senators LeFavour and Bock 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, 2, 3, & 4).

ADJOURNED

Chairman Lodge adjourned the meeting at 4:00 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 10, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, and Bock

MEMBERS ABSENT/ EXCUSED: Senator LeFavour

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

H55 Relating to Licenses for Nursing

Sandra Evans, Executive Director, Idaho Board of Nursing, stated under current law, nurses holding valid licenses in other jurisdictions that are seeking licensure in Idaho are required to meet mandated rigid academic and examination obligations. While this is ordinarily appropriate, in cases where nurses have been practicing safely for many years without any discipline in another jurisdiction, these rigid requirements may be an unnecessary artificial barrier to licensure in Idaho. The proposed legislation, coupled with a corresponding rule change and policy implementation, will permit the Board of Nursing to exercise sound discretion to waive strict adherence to these requirements where there is an adequate showing that the applying nurse is competent, public safety will not be compromised, and the nurse has satisfied equivalency requirements set by the Board. It is anticipated that this discretion will be exercised sparingly.

This proposed legislation will not result in any fiscal impact to the State General Fund.

Senator Darrington commented he was a strong proponent of reciprocal recognition, however this isn't reciprocity but it borders on it on one side. He then asked if other states extend us the same courtesy? **Ms. Evans** responded most of the states are. There are a couple of states whose laws are quite rigid.

Senator Bock queried in Section 2, lines 33 and 34, why was the word “approved” used rather than “accredited”? **Ms. Evans** replied the word approval is a critical word in this statute. Nursing Boards, unlike most other regulatory Boards, has statutory authority for Board of Nursing program approval. The reason that words of nursing are different is because historically nursing programs grew up in hospital based studies rather than academic institutions. Boards of Nursing became the approving body for those programs. The approval piece has carried over and Boards of Nursing have continued to do that. The reason the language is important to our statute is that in order to qualify for nurse licensure in any other jurisdiction, Boards of Nursing require that the nurse has graduated from a Board of Nursing approved educational program. Most Idaho nurse programs are nationally accredited through the academic processes, however, none of Idaho’s Licensed Practical Nurse (LPN) programs are currently nationally accredited.

Senator Bock asked what is meant by basic curriculum and can it be found in Board of Nursing rules? **Ms. Evans** replied this language cannot be found in rule or statute. However, nurses are very familiar with the language basic curriculum, which is referenced to the preparatory program. Nurses will frequently complete either a diploma program, which is a hospital based program, or an associate degree program and continuing education program for higher degrees, but it does not affect the licensure status.

Vice Chair Broadsword commented this would streamline the process for nurses moving into Idaho from other places. **Ms. Evans** responded she did not know if this would speed the process. In Idaho a person can be licensed quickly, unless there is a non-reaching license or criminal history or some other issue. What this legislation will do is allow the Board of Nursing discretion in licensing those who come from other states that have not met our basic requirements could now be considered. This discretionary process is outlined in rule. The classic example is the military corpsman who has worked in a VA medical center for a number of years, leaves the military and wants to enter civilian practice would not be eligible for licensure in Idaho because he or she didn’t complete an approved basic education program. **Vice Chair Broadsword** asked Ms. Evans if this law passes the Board will come back with rules that will outline exactly what the requirements are? **Ms. Evans** replied the committee approved the Board’s rules in February.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Senator Bock moved to send H55 to the floor with a do pass recommendation. **Vice Chair Broadsword** seconded the motion. **The motion carried by voice vote.**

H38

Relating to Podiatrists

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, on behalf of the Board of Podiatry, stated the Board of Podiatry

is amending 54-607, Idaho Code, to increase the cap on fees for renewal of podiatry licenses from \$400 to \$650. There is no impact on the General Fund. This change would increase the cap for renewals. Fees would need to be established by board rule in order to impact the Bureau's dedicated fund.

Senator Darrington commented he remembered the days when every fee charged for licensure had to be approved by legislature by statute. He said he was so pleased that now a cap is set and it is done by rule. This is the right thing to do and the right way to go and it makes it a whole lot better for the committee.

MOTION

Vice Chair Broadsword moved to send H38 to the Senate floor with a do pass recommendation and that it be placed on the Consent Calendar. **Senator Smyser** seconded the motion. **The motion carried by voice vote. Senator Bock** will sponsor the legislation.

H44

Relating to the Practice of Physical Therapy

Roger Hales, Attorney, representing the Bureau of Occupational Licenses, on behalf of The Board of Physical Therapy, stated the Board of Physical Therapy is amending section 54-2205, Idaho Code, to remove the Board from participation in PERSI. Section 54-2212, Idaho Code, is also being amended to clarify the education requirements for foreign trained physical therapists. There is no impact on the General Fund or the Bureau's dedicated fund.

MOTION

Senator Hammond moved to send H44 to the Senate floor with a do pass recommendation and that it be placed on the Consent Calendar. **Senator McGee** seconded the motion. **The motion carried by voice vote.**

ADJOURNED

Chairman Lodge adjourned the meeting at 3:27 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P. Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 11, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: Vice Chairman Broadsword

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

GUBERNATORIAL APPOINTMENT

Kent Ireton of Twin Falls, Idaho was appointed to the Commission for the Blind and Visually Impaired to serve a term commencing October 2, 2008 and expiring July 1, 2009.

Senator Darrington stated Mr. Ireton had worked for the Idaho Commission for the Blind, worked for the Alaska Division of Vocational Rehabilitation, and now worked for the Idaho Division of Vocational Rehabilitation, then asked, "what is the split between the commissioners and Vocational Rehabilitation in regard to money?" **Mr. Ireton** responded in the state of Alaska the Division of Vocational Rehabilitation was a single agency and internally there was a Division of Blind services. He stated he could not tell the exact split.

Senator Darrington asked if he understood correctly that in Idaho it is 12% for the Blind? **Mr. Ireton** responded that was his understanding. **Senator Darrington** asked if it was also correct that this was low compared to other states which are up in the 15-17% range. **Mr. Ireton** replied he had heard that from Angela Jones, Director, Idaho Commission for the Blind, who did a study on the agency in Idaho relative to other states, however, he did not know that for a fact himself but that was the information he had received. **Senator Darrington** said considering the fact that the Blind needs more of their fair share of that split and that issue could come before the Commission. As indicated in your literature you would abstain from voting due to a conflict with your employment with Vocational Rehabilitation, is that fair to the Commission to the Blind because you need to be dedicated to

supporting all you can for the Commission of the Blind and you would have to abstain and they need more than 12%. They ought to have 15%. **Mr. Ireton** replied in response to that as a Board Member he is not directing day to day procedures or directions of that matter, and his responsibility is to review policy, hire and interview an Executive Director. He would expect the Executive Director to be the advocate on that point issue to avoid any kind of conflict of interest one way or the other. There was a vote advising the Director to proceed with advocating for a higher allotment for the Commission and he abstained from that vote.

Senator Darrington stated when Vocational Rehabilitation and the Blind Commission may be at odds in some way over this issue or others, do you pledge to this committee that as a member of the Commission for the Blind you will be an advocate for Commission for the Blind? **Senator Darrington** said, "I can understand where your employment is, but also understand where your appointment is." **Mr. Ireton** said, "Senator, I do pledge a commitment to the Idaho Commission for the Blind and Visually Impaired, I am an advocate for the agency, and believe very strongly in their cause and mission. My role is to appoint and review a director who is going to be a very strong advocate for the agency and carry the mission forward including negotiations on a situation that might involve Idaho Division of Vocational Rehabilitation and the Commission. To the best of my knowledge there has not been a history of great conflicts between the two agencies, it has generally been very cooperative but again if the matter did come up, or if I needed to abstain to avoid a conflict of interest, I would do that."

Senator Hammond asked how often the Commission met. **Mr. Ireton** replied the Commission meets quarterly. **Senator Hammond** asked if Mr. Ireton was committed to attending all of those meetings. **Mr. Ireton** replied absolutely. He said he had been attending the meetings for the past year and has not missed one. **Senator Hammond** asked what does Mr. Ireton see as the primary issues facing the commission? **Mr. Ireton** replied there were a number of issues facing the Commission for the Blind. Blindness is a condition that is always going to be on the forefront of society and is not going away. Statistics show increases in certain causes of blindness not the least of which is an aging population that has a high incident of blindness. Dealing with this growing population with limited funding will be a challenge. The challenge in the future is staying on top of assisted technology. Some of the high technology things that are coming forth that are actually assisting the blind to be more independent, to be more productive and staying on top of that increased curve of knowledge and the expense that goes with that is going to be a challenge.

Senator Bock stated a conflict of interest is, when the interest of two parties diverge, in connection with the case described, if the interest of the agency and the interest of the employer are the same, there would not be a conflict of interest. **Senator Bock** suggested to Mr. Ireton that if he had council it would be worthwhile to consult to find out what a

conflict of interest is and when it actually arises. Then **Senator Bock** asked if Mr. Ireton would be willing to do that in his position on the Commission for the Blind? **Mr. Ireton** said that was excellent advise and he would take heed of that.

Chairman Lodge thanked Mr. Ireton and said the committee would be voting on his confirmation on Monday, March 16th.

GUBERNATORIAL APPOINTMENT

Michael D. Gibson of Nampa, Idaho was appointed to the Commission for the Blind and Visually Impaired to serve a term commencing October 2, 2009 and expiring July 1, 2011.

Senator Darrington asked if Mr. Gibson was a member of the National Federation of the Blind (NFB)? **Mr. Gibson** replied, "Yes sir." **Senator Darrington** asked if Mr. Gibson would be able to segregate and to separate the agenda of NFB from the mission of the Commission of the Blind? **Mr. Gibson** replied, "Yes." He went on to say that his personal belief is, everyone should have the right to have input. No matter if they belong to the National Federation of the Blind or the American Council of the Blind or whatever. He also stated that he personally believes that ones effectiveness is much better being affiliated with a consumer organization because the power of the collected and individual interests are important, and even though his personal views may coincide with the NFB he was there to represent the Idaho Commission for the Blind and Visually Impaired.

Senator Coiner asked how old was Mr. Gibson when he mainstreamed in the local school? **Mr. Gibson** replied he entered the third grade. Because of eye conditions he was nine years old when he was mainstreamed. **Senator Coiner** commented that he had a friend that became blind at age six and mainstreamed himself at about seven. He had readers and through that experience has been very successful. He has managed, he was an attorney and has been a Judge. Did you have readers or was there technology available at the University? What assistance did you have and how did you navigate? **Mr. Gibson** replied that he loved readers for a very important reason, that is how he met his wife in college. He had hired her as a reader at Boise State, where she was an education major getting her degree in Special Ed and we hit it off. When he went through school there were a variety of options available and the good news is there are more options available now. Better options. When he attended school K through 12, the materials available were recorded on cassette tape through an organization called Recordings for the Blind and Dyslexic and are still available for use. He also received materials in braille that Idaho State School for the Deaf and Blind (ISDB) provided as part of an itinerant consulting position. Most of his print work was done on a manual typewriter that he carried around from class to class during high school. In the nineties when personal computers were more affordable he had a computer equipped with screen reader technology. Nowadays the opportunities are even greater. Students who are blind or visually impaired have the PC with

screen readers like JAWS available to them but more importantly braille literacy. There are devices such as the braille note which he used to sell for Human Wear which is basically a palm pilot for the blind that has a refreshable braille display. Rather than going to the expense of anywhere from \$500 to \$5000 dollars to produce a hard copy braille book, it can now be converted electronically with refreshable braille display, as long as it is in an electronic file format you have instant braille. **Mr. Gibson** commented that he had more books on a memory card than the commission library can hold. That is the marvel of technology. There is still a need for readers. There is not one magic bullet. There is a toolbox with tools and the idea is what tool do you use for the particular situation. Know how to use it and when to use it effectively is going to insure your success. **Senator Coiner** stated his good friend Harry was very fond of his reader.

Senator Hammond asked if **Mr. Gibson** was committed to attending all scheduled Commission meetings and what does he see as the primary issues facing the commission? **Mr. Gibson** replied he is committed to the meetings and his past track record with the other Boards he served on has been excellent, missing only one or two meetings of the other Boards due to family emergencies. Unfortunately he had to miss the fall Board meeting of the Commission due to the death and funeral of his father. In extenuating circumstances he has missed meetings, other than that he is very committed to the Commission.

Mr. Gibson said he sees many of the same things that Mr. Ireton did as primary issues of concern for the Commission, however, he saw one more thing and that is transition. The Commission for the Blind is going to have to deal more effectively with transitioning student from High school into higher education. He said he sees this on a daily basis at the University. We receive students in the Disability Resource Center that for some reason or another are not equipped. Either they do not have the technology training that they need or as mentioned earlier they do not know how to apply those tools at the right time for the right reasons to be effective. This is one of the issues that he wants to help the commission do is to be more effective through the transitioning students from high school to higher education. That also applies to adults that are dealing with vision loss. Helping them know the rigors that they are going to have to endure in higher education if they choose to do college as part of their rehabilitation vocational plan. Helping them to understand those rigors. The other challenge is working with seniors. The largest and fastest population for vision impairment and blindness is the senior population. Helping them adjust and learn the skills so they can continue. Our senior population is living longer and have higher quality of life than thirty years ago and so it is important for them to be able to have the skills necessary in order to live productive and fulfilling lives.

Chairman Lodge stated Mr. Gibson was an inspiration and will be an asset to this Board. Thank you for the education about the new advanced technology, it is exciting and very important. **Chairman Lodge** introduced and thanked Angela Jones, Executive Director, Idaho

Commission for the Blind and Visually Impaired, for attending the meeting. She thanked both participants for their testimony.

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

S1108

Relating to Emergency Medical Services

Dia Gainor, Bureau Chief, Emergency Medical Services Bureau, Division of Health, Department of Health and Welfare, stated she was more than enthused to stand before the committee. What she was about to present is the administrative equivalent of what EMS calls running a successful code which is resuscitating a patient. S1108 has many important changes related to Idaho Code and Emergency Medical Services regulation. What they learned in the course of this process there were some fundamental concerns on the parts of a few state associations and those were very important concerns to understand and accommodate.

Ms. Gainor thanked **Chairman Lodge** for her vision and her decision making, charging them to enter, a not padded and of some concern, third story room to resolve the issues with this legislation. It was Ms. Gainor's observation that could have been a very safe place, given the life saving capabilities of those in the room, or very dangerous place. Agreement was reached.

There were three written proposals in front of the group and many verbal observations and recommendations. RS18325C1a1 and is in search of a second for this amendment to S1108. There are three changes to the bill. The first is the addition of a new definition. In part this is solving some less than elegant wording that was in S1108. To define exactly who is talked about when referring to an applicant agency, that is changing how it does business or is entering into the business or provision of EMS for the first time. This definition is added as definition number seven. Beginning at page 1, lines 22 through 30, subsection seven is a refined set of language that lists the same information sought in the original language but with some important refinements and clarifications. Namely, declaration of anticipated agency costs and revenues, and the collection and reporting. What used to be two separate subsections are combined into one of data upon receiving a license. An important addition to the declaration of anticipated agency costs and revenues is found at lines 34 through 35. Any other EMS Bureau use of the costs and data supplied by applicants is limited exclusively to informational purposes. This was a very important point of negotiation specifically for the Associations. The second change, specifically at the request of the Idaho State Fire Commissioners Association, page 2 of the RS, specific listing of the administrative code that would govern appeals of these proceedings. That is the administrative code that governs our license issuance process today and they thought that would be reassuring for their

members to see and know exactly where they could go and look up the procedure in the event the Bureau denies a license. Third, there is a correction to the title as a result of these changes.

Chairman Lodge asked participants to stand and be recognized for the great collaborative effort to bring this legislation forward.

Senator Darrington stated he thought he knew what was done then went on to explain. All they did was take the definition out that was over on page seven and move it up to the definition section, add a couple of points into it and change a couple of words, namely made the word increase read change. The guts of this thing really is what you are inserting back in 35 through 43 which is deleted which is section seven and eight. And that is where the heart of the controversy is. He then asked if he was right? **Ms. Gainor** replied he was correct. **Senator Darrington** said this gives you criteria which is adequate to license ambulances and still satisfies the needs of all the people that stood up in support, and that is what it is all about, right? **Ms. Gainor** replied it is certainly an improvement of our current licensure process.

Senator Hammond commented if, for example, in Kootenai County, all are working together and have common agreement among the different service providers. Looking at collecting and reporting data and what an applicant needs to provide, are you able to make a determination that if some other provider wanted to come in to the county, say a private provider, even if they have all the attributes necessary to provide this service, are you able to refuse to license them because you see damage to the current public providers within that county or would you have to provide them a licence if they had all the necessary attributes? **Ms. Gainor** responded the Board does not have a basis to deny solely on the effect it may have on an existing public provider. It is expected that in the course of doing the negotiated rulemaking associated with these criteria there will be a great deal of discussion about the importance of this issue and to what extent the rules may offset the impact of that happening. This is a very real threat to EMS systems throughout the state today.

Murry Sturkie, DO, Physician, representing, EMS Committee, and the Idaho Chapter of the American College of Emergency Physicians, stated that both entities are in favor of the changes that have been made. This is not a solution but a beginning to further discussions and coming back in front of the committee for further changes as mentioned by Ms. Gainor. There is lot more work that needs to be done. **Dr. Sturkie** thanked the committee for supporting this measure.

Tom Allen, Deputy Fire Chief, Nampa City Fire Department, testified he would echo what Dr. Sturkie mentioned. The visionary leadership of Chairman Lodge to send them back to the table, sometimes we can agree and sometimes cannot agree. It was great to see Chairman Lodge take the lead. It was wise council and it was great to be a part of this group, and a great process to be part of and the Fire Chiefs Association as well as the city of Nampa is pleased with the legislation.

They absolutely support this legislation without reservation.

Troy Hagen, Paramedic, testified that he was not going to beleaguer this any longer and wanted to say there is a lot of work that needs to be done but are up to the task. It is appreciated that this legislation moved forward and anchored in law providing very clear direction. He thanked Chairman Lodge for her leadership.

Chairman Lodge thanked Ken Harwood, Executive Director, Idaho Association of Cities, for his participation.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary. (See attachments 1,2,3)

MOTION

Senator Darrington moved S1108 be referred to the 14th Order for amendment. **Senator McGee** seconded the motion. **The motion carried by voice vote.**

ADJOURNMENT

Chairman Lodge adjourned the meeting at 3:40 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 16, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

Senator LeFavour moved to approve the minutes of March 3, 2009. **Vice Chair Broadsword** seconded the motion. **The motion carried by voice vote.**

GUBERNATORIAL APPOINTMENT **Kent Ireton** of Twin Falls, Idaho was appointed to the Commission for the Blind and Visually Impaired to serve a term commencing October 2, 2008 and expiring July 1, 2009.

MOTION Moved by **Senator Darrington**, seconded by **Senator McGee**, that the Gubernatorial appointment of **Kent Ireton** to the Commission for the Blind and Visually Impaired be reported out with the recommendation that the appointment be confirmed by the Senate. **The motion carried by voice vote.** **Senator Coiner** will be the sponsor of the candidate.

GUBERNATORIAL APPOINTMENT **Michael D. Gibson** of Nampa, Idaho was appointed to the Commission for the Blind and Visually Impaired to serve a term commencing October 2, 2008 and expiring July 1, 2011.

MOTION Moved by **Senator Bock**, seconded by **Senator Hammond**, that the Gubernatorial appointment of **Michael D. Gibson** to the Commission for the Blind and Visually Impaired be reported out with the recommendation that the appointment be confirmed by the Senate. **The motion carried by voice vote.** **Senator Lodge** will be the sponsor of the candidate.

Senator Darrington requested the secretary see that his exchange with both candidates are recorded accurately and word for word in the minutes of March 11, 2009.

H185

Relating to Midwifery

Representative Janice K. McGeachin presenting H185, relating to midwifery stated she would read from Chapter 54, section 54-5401, lines 23 through 29, Legislative Purpose and Intent. This chapter finds and declares that the practice of midwifery has been a part of culture and tradition of Idaho since before pioneer days and that for personal, religious and economic reasons Idaho citizens choose midwifery care.

The purpose of this chapter is to preserve the rights of families to deliver their children in the setting of their choice; to provide additional maternity care options for Idaho's families; to protect the public health, safety, and welfare and to provide a mechanism to assure quality care. That is the intent of the legislation.

She said she would like to give the committee a brief history of the effort that was made over the past year.

Last year, a lot of people in the House were unfamiliar with the provisions of the language of the midwifery bill. The language was modeled after the Utah legislation and the intent was to put certain standards into place for women or men who practice midwifery to assure quality of care. Work was done to educate the House Health and Welfare Committee members, and after nineteen hours of hearing, the bill passed through the committee with amendments.

The bill went to the House floor where a number of other amendments were proposed to the legislation. The legislation withheld those amendments, but in the end an interpretation by the Attorney General, was that the standards we were trying to put in place for the educated midwives would also apply to all of the uneducated midwives, those that did not have their Certified Professional Midwife (CPM) credential. It was at that time, the decision was made to pull the bill.

Participants were determined and committed to accommodate the legitimate concerns of the medical community. A meeting was requested with all interested parties to have a round table discussion and to listen to the concerns of all parties relating to the legislation. Those participating were certified professional midwives, members from the Idaho Midwifery Council, various Legislators, representatives from the Idaho Medical Association, representatives from the Idaho Hospital Association, the Board of Nursing, Blue Cross of Idaho, Regents Blue Shield of Idaho, the Idaho Paranatal Project and the Idaho Family Physicians. Every entity invited attended the meeting in June. One of the issues that arose from that meeting was an apparent lack of understanding of the educational requirement of the certified professional midwife. To have a better understanding of the educational requirements attendees requested the National Association of Midwifery be contacted and a meeting date established to explain the educational requirements necessary to obtain

a CPM certification. In addition, language from other states was reviewed, and framework legislation was developed.

At the beginning of session a legislative reception was held for Legislators, the Idaho Board of Pharmacy, the Bureau of Occupational Licenses, the Governors Office, Idaho Attorney Generals Office and members from Idaho District of Health. A subsequent reception, geared toward the medical community, was held and was also well attended. A lot of work and negotiation was done with the members of the medical community to do the best that we could to address the concerns that they all had. There were literally hours and hours of phone calls and meetings together with this group and, all the time dedicated by these groups is appreciated.

Representative McGeachin assured the committee that for those individuals that bothered to show up at the meetings, every attempt was made to satisfy their concerns.

Representative McGeachin stated this bill does three things. First it insures the right of families to choose how, where, and with whom they give birth; it establishes midwives as legitimate professionals offering an optimal standard of care; and it promotes cooperation and collaboration among midwives and other professionals interested in improving paranatal outcomes in Idaho. This legislation itself is testament to that fact.

It was inspiring for her to be at the table and see Idaho CPM's at the table with some of the most distinguished Doctors in the state. This legislation itself facilitated that process of collaboration. She was pleased to present a good bill and asked for the committee's support.

Senator Darrington commented there were two or three pages of criteria to direct the issues on which rules will be made. It is a very extensive list. In the last few days some of us have become aware that there is quite a split between the midwifery community regarding this legislation. What makes you think that the rules will be any more successful with this licensing Board than they were with the Board of Naturopathy which was a total failure in every way? **Representative McGeachin** replied she was very pleased to respond to his concern. As a Legislator, the first draft of the bill that came forward was a framework piece of legislation. There was considerable concern brought forth by the medical community relating to what you speak of. That is the reason there is extensive detailed language written into the legislation. As a legislator she would have preferred it to be framework language, but wanted to make sure the concerns of the medical community were addressed and that the same thing would not happen with the Board of Midwifery that happened in the case of the Naturopathists. To specifically answer the question of whether this will have the same outcome, is when you look at how the Board is comprised there will be three certified professional CPMs. The Board of Midwifery will have to do negotiated rulemaking that the Board shall promulgate and adopt rules pursuant to

chapter 52, Title 67, necessary to administer this chapter. The Board is comprised of five members, three CPMs, one Doctor, and one public member. It is unlikely this will have the same outcome as the Naturopathists.

Representative McGeachin thanked the committee and yielded the remainder of her time to **Kris Ellis**, Lobbyist, Idaho Midwifery Council, to review the language of the legislation with the committee.

Kris Ellis, representing the Idaho Midwifery Council, stated it has been a great pleasure to work on this legislation and agreed with Representative McGeachin the legislation before the committee is a good piece of legislation.

The legislative purpose and intent was a very contentious issue last year with the bill in the House. This language was specifically redrafted and run by the Attorney General to make certain it covered the bases and clearly established what the purpose of intent is. Chapter 5402 goes through the definitions and is fairly straight forward except for the practice of midwifery providing maternity care for women and their newborns during antepartum, intrapartum, and postpartum periods for both maternal and newborn care not to exceed six weeks. This was a large negotiating point that was also an issue with the Attorney Generals Office and a large point of contention last year.

The Board of Midwifery is created in section 54-5403. The Board is not allowed to be comprised by those that are grandmothers in. Anyone appointed to the Board as a midwife must have CPM credentials. Currently on the Naturopath Board that is not the case, it is split with those that have gone to an accredited school and those that have not. This Board will have the same point of reference, education and training when they go to rulemaking.

Section 54-5404 addresses powers and duties of the Board and is straight forward. Section 54-5405 pertains to rulemaking. The first section contains a lengthy list of pharmaceuticals that a midwife would be allowed to carry. This list started out considerably shorter than it is now, however, through discussions with the medical professionals and the hospitals, the list was extended.

The relationship between the midwives and the physicians has grown tremendously through this process. Both sides learned what was needed and why it was needed and grew to encompass what is seen in the legislation today. In discussions with the Board of Pharmacy those drugs will be obtained through a wholesaler.

Page 4, line 14, lists what midwives are prohibited from doing, and what clients are prohibited from seeing a midwife and why. The list includes everything from a body mass index of forty (40.0) which is morbidly obese, prior chemotherapy, placental abnormality, etc. Midwives are trained to deliver normal pregnancies to healthy mothers. This lists a set of situations that for the most part is agreed to. This is one area where

the midwives did have to collaborate. Some midwives have been assisting in multiple gestations, twins and triplets. Line 32 is a list of medical conditions that require the mother to be co-managed with a physician, for example, if she has diabetes, thyroid disease, epilepsy, hypertension, cardiac disease and so on. In order for a mother to be seen by a midwife through her pregnancy she will also have to be seeing a medical doctor if she has those conditions. Page 5, section 3 (iii), line 5, is the section that requires a licensed midwife to recommend that a client see a physician licensed under chapter 18, title 54, Idaho Code, and to document and maintain a record as required by section 54-5411, Idaho Code, if such client has a history of disorders, diagnoses, conditions, or symptoms that include previous complications. Section 4 (iv) requires that a licensed midwife shall facilitate the immediate transfer to a hospital for emergency care for disorder, diagnoses, conditions or symptoms that jeopardize the health of the mother or newborn.

54-5406 covers the licensure penalty section. After July 1, 2010, it is a misdemeanor for any person to engage in the practice of midwifery without a license, and any person who pleads guilty to or is found guilty a second or subsequent offense under this subsection shall be guilty of a felony. 54-5407 qualifications for licensure covers what certifications are required to become licensed. Above and beyond a CPM certification, additional courses are required in pharmacology, the treatment of shock/IV therapy and suturing specific to midwives. Section 2, line II grandmothers in midwives who have been continuously practicing midwifery in Idaho for at least five (5) years prior to July 1, 2009, the qualifications for licensure may be waived by the board if such midwife provides required documentation to the board.

Senator Coiner asked is the pharmaceutical training included for those individuals grandmothers in? **Ms. Ellis** replied yes it is. On page 7, line 18, (b), states "in addition to the completion of the courses in subsection (1)c".

Ms. Ellis continued with section 54-5408 Exemptions, and stated this is fairly similar to the Medical Practice Act. The religious tenets are slightly expanded and allows those who are licensed in the state and within their scope can do midwifery. The fees provision in section 54-5409 is as recommended by the Bureau of Occupational Licensing. Section 54-5410 covers the client protection - unprofessional conduct goes into the disclosure of record keeping, submit a birth certificate, which is currently required by vital statistics. However, the vital statistics birth certificate does not have a designation for a certified professional midwife and will be changed upon passing of this legislation. Through vital statistics births attended by midwives can be tracked. 54-5411 disclosure and record keeping - license renewal line 28 (e) "notice of whether or not the licensed midwife has a professional liability insurance coverage", currently this is not available and the midwives will have to disclose this to their clients. If insurance should become available then obviously they can disclose it either way. Currently it is not an option.

Senator Bock asked if malpractice insurance was available in any state?

Ms. Ellis replied it is available in two states that fund it themselves. There are two states as a requirement of taking medicaid there has to be malpractice insurance so these two states have set up their own fund. **Senator Bock** asked which two states? **Ms. Ellis** replied Washington and Oregon.

Ms. Ellis continued with page 9, section (4), refers to the practice data that will be submitted to the Board and they will be bringing that back to the legislature with a report. Section 54-5412 refers to vicarious liability. This speaks to the relationship between the physician and the midwife. In many areas of the State there is a good working relationship between the physician and the midwife. In a couple of areas it is not. This section was placed in the legislation specifically to encourage these relationships for the benefit of the mother. If a midwife calls a physician with a question it does not dictate that the patient is the physicians.

Section 67- 2601 relates to the constitutional part of the Bureau of Occupational Licenses, adds it in on lines 32, and 33; 67-2602 on page 11 adds the Bureau of Occupational Licenses to the Department of self-governing agencies. Section 4 on line 28 is where the Board shall come back to the legislature with a report on the status of the Board and the practice of midwifery. Section 5 is a sunset provision that for some unforeseeable reason should this turn out like the Naturopaths this would automatically sunset in five years.

The results of this bill, it puts sidebars on the practice of midwifery, it requires educational standards in a health care field that is growing and Idaho families deserve to know that the midwife they choose is educated and trained to deal with situations that, although they might be rare, may happen when things don't go as planned. This legislation enables a midwife to have the medication she needs and the knowledge to deal with those critical situations.

Senator Bock asked why the sunset provision covered only section 1?

Ms. Ellis response inaudible due to baby crying in room. **Chairman Lodge** asked that the baby be taken from the hearing room.

Senator Bock remarked on page 11, section 67-2602. Bureau of Occupational Licenses, line 16 the words "board of midwifery" and if section 1 of this bill becomes null and void, then the presence of midwifery in section 2602 would no longer be appropriate. The sunset provision should encompass all of the statutes that make reference to the board of midwifery. **Ms. Ellis** replied she didn't think they would want to sunset the Bureau of Occupational Licenses (BOL), the BOL would amend their statute as needed.

Vice Chair Broadsword asked if they would come back and take out section five if they were up and running by July 1, 2014? **Ms. Ellis** replied yes that is really the reason for section 4 where the board of midwifery shall report the status of the board on the practice of midwifery

in that same legislative session so the intent would be that the board would bring their report as well as a piece of legislation that would repeal the sunset clause.

Senator Coiner stated he didn't see anything in the legislation about what has to happen before licenses can be issued. Will there be temporary rules? If rules are established at what point can they start issuing licenses. **Ms. Ellis** replied that would be at the discretion of the Governor's office. If the Governor makes those temporary or pending. The Governor has three reasons he can use to make a rule enforceable. **Senator Coiner** commented that this is something that has to be in this legislation for him to support and that is that there will no licenses issued until permanent rules have gone through the legislature. This is a prerequisite for him, and he cannot support this without having that in the legislation. Is this something to consider, sending this to the 14th order and inserting this language? **Ms. Ellis** answered she didn't think that was necessary. As seen with the Naturopath rules the Governor had not stated that they were not life and safety issue. And so the Board cannot issue, unless the Governor determines the rules are that, the rules are not in effect and licenses cannot be issued. **Senator Coiner** commented there have been other Governors and there may be a different Governor in place and it is unknown what that new Governor will do. It is a prerequisite that the rules have to come before the legislature and have to be approved before any licenses are issued. Maybe this Governor, maybe the next Governor, they might think a temporary rule was fine and start issuing licenses and finds it unacceptable for these reasons. This has been seen in other venues.

Chairman Lodge requested Tammy Perkins, Office of the Governor, respond to Senator Coiner's concerns. **Ms. Perkins** replied she could not really speak to that because she could not be sure of a future Governor. At this point it does look the way Ms. Ellis states. **Ms. Ellis** commented she was not sure if there was a question asked, however, there is a one year window of time currently for that to occur. It is not a misdemeanor to practice as a midwife until July 1, 2010. If the Governor did not think there were health and safety rules, and the Board did not issue licensing until after the legislature sine die in 2010, that would not be a problem with the legislation as it is written. **Senator Coiner** commented the big thing is, and again he sensed an air of discontent out in the hinterlands, if this Board fails to come up with viable rules in a year or two he would want in the legislation as a fall back issue that they have to have approved rules through the legislature before any license is issued. **Senator Coiner** remarked he would be adamant about this and would try to gain support from other legislators.

Senator Darrington stated if this bill were to become law July 1, 2010, the Governor would appoint Board Members, sometime after July 1, 2010. The Board would then have until the next legislative session to come up with rulemaking which would be a very narrow window of time. Nevertheless, assume they were ready to go in August or September and they completed the necessary steps prior to the start of the

legislative session, then the committee would have the rules before it. The committee would then approve or reject the rules. If the rules could not be completed in that narrow window of time, then in regard to Senator Coiners question how would that kick in, in 2011 this legislature would finally approve the rules? **Ms. Ellis** replied to address a couple of points, she thought the synopses was exactly correct. One reason the rules could be developed is because so much time and effort was invested into the scope of practice in the legislation. Working with the Medical Association many times the midwives would say why do we have to put that in there, why is this necessary, why can't we do this in rule? The answer was because of the Naturopaths, and they will be thanked later when the rules process is not so contentious because 99.9% of the issues have been ironed out in the beginning. For that reason the rules coming together by September or October is possible. However, if the legislature did not approve the rules, the statute would have to be amended to allow for those currently practicing. **Senator Darrington** commented that he agreed with Ms. Ellis, except after the Board is appointed and they meet and organize, then are ready to start working with the legal council. The APA requires time frames, a time to publish, time for public comment, time for public hearings and then there will be some dissension from within the ranks of the midwives, there may be some public hearings at that point, so the time frame may be fairly constrained to be ready for a January 1st set of rules. There is a possibility it may not happen. Rule making does not happen very fast. **Ms. Ellis** replied she certainly agrees with Senator Darrington. August 25th is the deadline for the initial rules to be submitted and after that time the rules can be amended as those public comments and hearings may require, but there would certainly have to be at least a framework and fairly good outline and specificity to those rules by August 31st.

Senator Coiner asked Ms. Ellis to walk him through this, if this passes, this takes effect as of July 1, 2009. That will be the first opportunity the Governor will have something before him to start forming a Board, which may take a month, two months or three months to get the Board members, is that correct? **Ms. Ellis** replied this issue has been discussed with the Bureau of Occupational License as well as with the Governor's Office and the intent from the Midwifery Council and the Medical Association is to have those names submitted prior to July 1st, 2009. The intent is to have the names submitted and on the Governors desk prior to July 1st and appointments could be made shortly thereafter. **Senator Coiner** commented there were no guarantees this would take place. He then asked, where in the legislation is the July, 2010 reference Ms. Ellis mentioned? **Ms. Ellis** replied page 6, line 44. Except as provided in section 54-5408, which are the people who are already exempt. On or after July 10th it will be a misdemeanor. It is not a misdemeanor from July, 1st 2009 to July 1st, 2010 which allows time for the Board to establish and initialize. **Senator Coiner** commented in a year after the statute goes into effect it becomes a misdemeanor if you do not have rules? **Ms. Ellis** responded if you do not have a license by July 1st, 2010 and are practicing midwifery you will be in violation of the statute.

Senator Coiner stated this is set up so that there is a drop dead date, a year after the statute goes into effect, and there are less than six months to establish rules. **Ms. Ellis** replied that date, as well as this whole process, was thoroughly reviewed by the Governor's Office, the Bureau of Occupational License who gave guidance in this specific area, and both entities are satisfied with the way this is written. In an ideal world, Governor's appointments would be made on July 1st, we do not live in an ideal world and she couldn't make any guarantees either. What she could tell was both entities that will be making those decisions are comfortable with the time frame established. Senator Coiner stated he was a lot less confident in that occurring and thought different language is needed in the legislation to slow the process in the middle.

Senator LeFavour said it seemed like there is a lot laid out in the legislation and was impressed with the degree of specificity, then asked what is left? **Ms. Ellis** responded that was a good question. There are some things like the paper work that Senator Broadsword mentioned, standards and procedural pieces and there may be others. The rules say prohibit these things and at a minimum these are the scenarios when you transport and there may be some expansions of those pieces, however she did not expect it to be a large section.

Senator Shawn Keough stated what she would impart to the committee is that this has been a phenomenal journey. She understands the concerns that have been expressed. This is a very diverse, and dynamic group of individuals who were diametrically opposed towards even considering something like this for Idaho. It is a testament to their forbearance how far they have come and that we have arrived at a truly consensus piece of legislation. A piece of legislation where doctors, nurses and midwives have worked together and ironed out differences between a community that often does not see eye to eye.

This is a consensus piece of legislation that is very important. These individuals have learned from the Naturopaths, as have most in this building, to the extent that prior to the Naturopathic incident a very different piece of legislation would have been seen. It would have been a framework with details filled in by rule. This piece of legislation has most of the rules outlined in statute. Specifically to make sure, that everybody was at the table and held to their commitments of working together so that indeed, the rule process could move quickly once this legislation is passed.

The midwife community, doctors, hospitals and the medical profession who have been involved since day one have come a very long way. The bottom line is a quality of care that Idahoans choose is being provided with this legislation. If nothing is done with this legislation babies in Idaho will continue to be delivered by midwives.

What this legislation does is assure there is some minimum standard of care that midwives who have invested in themselves, their education and in their profession will follow to the degree possible.

Senator Keough stated she was proud to be a part of this team and asked for the committee's support.

Molly Steckel, Idaho Medical Association, stated the Association is 2400 members consisting primarily of physicians, but also other health care professionals.

The Association wants to thank the midwife community, Representative McGeachin, Senator Keough, Mr. Benton, Ms. Ellis and everyone that has worked on this for the last year. This has been a contentious issue for years. No one got everything that they wanted, but everyone would agree this is a much better piece of legislation than it was.

When the physicians felt there was enough patient safety protocols in the legislation, in statute not in rule, the IMA removed its opposition.

Steve Millard, Idaho Hospital Association, stated he had witnessed and was part of this process and can state it was a hair pulling and gut wrenching discussions that have ended up in what he thinks is a very good piece of regulatory legislation, and that is what it is. This regulates a practice and the Idaho Hospital Association has no opposition. This legislation should pass. It has the safe guards that are necessary and there is a group of people that will be regulated in health standards and that is a good thing.

Michelle Bartlett, Legislative Chair and Vice President, Idaho Midwifery Council, spoke not only on behalf of the Council but as a mother of seven children, six of which were born at home. She also stated she was a grandmother of eight children and was able to catch four of those grand-babies. She said she was honored to be before the committee to ask for their support of H185. This bill is an important piece of legislation that protects the health, welfare and safety of mothers and babies. Currently in Idaho it is a felony for midwives to use emergency medication which includes oxygen. All midwives attending women in childbirth should be trained in neonatal resuscitation and the appropriate use of other potentially life saving medications. Most midwives are, not all. This is why she has carried the torch for licensure and the passage of H185 and why she has remained steadfast in her resolve to legalize midwifery in Idaho for all midwives. **Ms. Bartlett** stated she was a Certified Professional Midwife in Montana when she moved to Idaho. She then iterated a very interpersonal experience with midwifery in Idaho. During a delivery she administered Pitocin, a life saving drug, to stop the mothers hemorrhaging. In Idaho this is against the law and ultimately she was arrested and jailed. Eventually the case was dismissed.

In closing she said H185 does protect the health, safety and welfare of mothers and babies; it provides for emergency medications; it provides for training of above and beyond the CPM credential; as pharmacology, neonatal resuscitation, shock and IV therapy have been added. This protects the safety, health and welfare of mothers and babies. It does so by requiring that all midwives have the education and skills necessary to handle the rare but serious emergencies. **Ms. Bartlett** then asked for

the committee's support to pass H185.

Mr. John Knickerbocker, testified and submitted written testimony in opposition of this legislation.

Senator Smyser asked if there was discussion during the negotiation relating to page 4, line 14, (ii), which states a licensed midwife is prohibited from providing care for a client with a history of disorders, diagnoses, conditions or symptoms that include items 1 through 11. **Ms. Steckel** replied all of these issues were addressed and worked through with a team of physicians and Dr. Clarence Bleh, Maternal Fetal Medicine, Perinatologist, St. Lukes Hospital. Dr. Bleh sees to the most at risk pregnancies and deliveries and he indicated there was a 50% chance that subsequent pregnancies and deliveries, for example number 9, previous pre-eclampsia resulting in a premature delivery, would result in another episode which is life threatening. It is understood that you can have a breech birth that perhaps a midwife can handle and be perfectly fine, but you can also have problems. This is not to say a midwife couldn't handle some of these in the best possible world, but as our doctors say delivering babies is 95% successful and 5% sheer terror. When these incidences occur, they go bad fast and people die. These have been very carefully worked through.

Peter and Michelle Young, Presidents, Idaho Midwifery, Ashton, Idaho, introduced their family, Luke 11, Lincoln 8, Lauren 4, and Andrew 2, testified in support of this legislation.

Chris Stevens, testified and submitted written testimony in opposition of this legislation.

Vice Chair Broadsword reminded Mr. Stevens that he would recite his facts, then asked, "Where did you get your facts?" **Mr. Stevens** replied researching licensing and regulations and the effects that it has on consumers and consumer choices. **Vice Chair Broadsword** commented that Mr. Stevens wife had been a midwife consumer for two of their children, should she have another child with a midwife, and were to have a problem, wouldn't you feel safer if the midwife was credentialed and could administer life saving medication if necessary? **Mr. Stevens** replied that addresses the issue that we are all faced with and all agree, the bigger question should be why is it illegal for a midwife to administer a life saving medication in an emergency situation? It is nonsense and needs to be addressed rather than restricting consumer choices and licencing and regulating midwives. **Senator LeFavour** commented she was having a hard time understanding Mr. Stevens objectives and is trying to envision what kind of licensure bill you could support. She asked is there any licensure bill that you would support? **Mr. Stevens** replied no.

Barbara Rawlings, President, Idaho Midwifery Council, a practicing midwife since 1976 attending over 800 births, testified and submitted written testimony in support of this legislation.

Chairman Lodge queried how many known midwives were contacted during this process. **Ms. Rawlings** replied over the last four years in the neighborhood of 50 midwives have been contacted. **Chairman Lodge** asked if that is how many midwives there are in the state. **Ms. Rawlings** replied yes, approximately. There are some that we do not have contact with and some who have asked to be removed from our contact list. **Chairman Lodge** asked if practicing midwifery is like any other profession that requires continuing education to keep up on skills. **Ms. Rawlings** replied it is always important to keep the educational process active. Regardless of how many babies you are delivering, study and continuing education is important to all of us. There is always more to learn. What she found in 35 years of practice is that the more you know, the more you realize you don't know.

Vice Chairman Broadsword asked Mr. Rawlings to respond to Ms. Stevens allegation that the few midwives that worked on this legislation will have a monopoly. **Ms. Rawlings** replied while not everyone loves everything about this bill the majority of practicing midwives in this state have indicated to the organization that they would license. There is a great deal of support for licensing and for this legislation.

Vice Chair Broadsword asked for an estimate of how much this legislation would add to the cost of a delivery. **Ms. Rawlings** replied she wished she could. The cost will vary from practice to practice. The practices that are busier will have less impact than the practices that are not as busy. Fees may have to be raised. Fees have not been set, this will take place during rulemaking. None of us know what those fees are going to be, it is difficult to answer the question.

Senator Coiner asked how many names will be put forward to the Governor for the Board? **Ms. Rawlings** replied there will be five members on the Board of Midwifery. Three Certified Professional Midwives, one physician and one member of the public. **Senator Coiner** stated that what he knows of the Governor's appointments, he would want three names for each position to come forward. Is there a group of names established that would qualify that can be forwarded to the Governor? **Ms. Rawlings** replied no. In the bill on page 3, under 54-5404, the Governor will take recommendations from the Idaho Midwifery Council, will also take recommendations from outside the Midwifery Council to make those appointments and will serve at the pleasure of the Governor.

Chairman Lodge reading the sign in sheet asked, "Deborah and Connie Ray are you together?" **Deborah Ray** responded yes, they were together. **Chairman Lodge** asked if they wanted to come to the podium together? **Deborah Ray** replied that she had signed up to speak but Mr. Stevens covered everything she was going to say and would like Mrs. Stevens to be able to have an opportunity to speak in her stead. **Chairman Lodge** asked what about Connie? **Connie Ray** replied she didn't want to speak. **Chairman Lodge** responded thank you.

Mirelle Stevens, midwifery consumer, Pocatello, Idaho, testified and submitted written testimony in opposition of this legislation.

Chairman Lodge noted there were several individuals that had signed up to testify in support of this legislation. In the interest of time, she asked them to stand and be recognized. She thanked them for attending and asked if they had written testimony to please give it to the secretary for inclusion with the meeting minutes.

Chairman Lodge asked **Dennis Stevenson**, Administrative Rules Coordinator, Office of Administrative Rules, Department of Administration, if he would answer some questions. **Mr. Stevenson** replied he would be delighted. **Senator Coiner** asked if **Mr. Stevenson** had witnessed the forming of an original Board in his tenure with the Department? **Mr. Stevenson** replied no, he hadn't but had seen the process in action. **Senator Coiner** asked if **Mr. Stevenson** had any sense of the time schedule it would take? **Mr. Stevenson** replied he had witnessed cases where the Governor has not filled positions with Boards that have members missing. His guess was that the Governor would try to get this Board into place by July 1 so rules could be formulated. **Senator Coiner** asked in the process in getting rules what is the drop dead date for having rules into your office so that they can get before the legislature the next legislative session? **Mr. Stevenson** replied if the agency were to have their proposed rules ready to go they would have to have them to my office by August 28th of this year. That would give sufficient time to receive public comment, adopt a pending rule and have the pending rule ready to go for the legislative session next year. In the event the date is missed the way that the legislation is written and because of the issue involved, there would be an opportunity to adopt this as a temporary rule which would come before the legislature to be extended so the pending rule could be finished. **Senator Coiner** asked if they would have the opportunity to issue licensure under a temporary rule? **Mr. Stevenson** replied yes they would. **Senator Coiner** commented there could be two scenario's, one the temporary rule could get ready and the legislature could see it next session, or after sine die they could bring a temporary rule, are these the two scenarios? **Mr. Stevenson** replied what has to happen under the event of the adoption of temporary rule is if there is a fee involved, the agency would have to come forward and say there is immediate danger that is being averted that requires this rule to be put into place with a fee, a temporary rule would be imposed with a fee. In that event because of the nature of this particular law this would be something that the Governor would sign off on. Worst case scenario if the Governor did not sign off on this it would not have a rule in place until the 2011 session. **Senator Coiner** thanked Mr. Stevenson.

Chairman Lodge stated everyone who was against this legislation had a chance to testify. **Laura Grout**, Childbirth Instructor and mother, spoke up and indicated she had signed up to testify. **Chairman Lodge** noted that Ms. Grout had not indicated pro or con. **Ms. Grout** said she didn't

sign either because she was for amending the legislation. **Chairman Lodge** replied OK, two minutes, no more.

Ms. Grout testified and submitted written testimony in support and opposition to this legislation. **Chairman Lodge** commented that in section 54-5408 number 3 is specifically what she had asked be placed in this legislation for her constituents, and that covers the religious aspects. The religious exemption is in this legislation. **Ms. Grout** asked the person who is seeking midwifery care does not have to go see a doctor but can go see the midwife anyway, and the midwife won't have prosecution? **Chairman Lodge** responded usually in these religious ones they serve each other. In my area they help each other and there is no charge. **Ms. Grout** asked, "so there would be no charge?" **Chairman Lodge** replied, "No charge."

Chairman Lodge allowed that there were three committee members that were supposed to be at other appointments and time was of the essence.

Dennis Tanikuni, Lobbyist, Idaho Farm Bureau, testified and submitted written testimony in support of this legislation.

Senator Smyser asked regarding the religious practice in section 54-5408, anyone who would be willing to do midwifery for religious practices is exempt from this legislation. **Chairman Lodge** replied no fee is charged or received.

Senator Coiner stated he supported the bill and he supported licensure but was having a real hang-up on the mechanics that are written into this bill. The time line and being able to accomplish all of those things. He then asked Larry Benton to give him a little history of how they got to such a tight time line.

Mr. Benton replied he was part and parcel of developing this legislation. He said he did not set the time line, however, the very careful planning of this legislation with all parties sitting at the table, which he was one, lead him to believe that the timing is essential, can be accomplished, can set the rules, have them before the committee in a pending form and still meet the deadline of July 1, 2010. If those rules are not in place it would be hard to imagine that anyone is going to be arrested based on the law in which the Board has not set forth the rules and how they will be applied until such a time that those rules are approved by the legislature. **Mr. Benton** stated he was quite sure that if rules come forth on this piece it should be in a pending form. It would be foolish at this point to bring them forth in a temporary fashion. He said he believed the time frame would work.

Senator Coiner asked if July 1, 2010 is the drop dead date, and only if rules are passed anyone practicing midwifery after that date would be licensed? **Mr. Benton** deferred to Representative McGeachin.

Representative McGeachin responded the language was

recommended to the work group specifically by Tana Cory, Director, Bureau of Occupational License. In an effort to accommodate your concerns, as we have demonstrated all along, and we do understand the concern. If you are thinking about amending the bill to change the date rather than putting the bill in the amending order the recommendation for consideration might be to offer a trailer bill that states licenses shall not go into effect until rules are adopted by the Board. **Senator Coiner** expressed concern and said, "if the horse is out of the barn how would this be accomplished without putting it into the legislation."

Representative McGeachin replied the recommendation is the bill could be held on the calendar until the trailer bill comes through and is approved. **Senator Coiner** stated he was the only one concerned with this issue, however, he sees a very tight time line, and if there are one or two hiccups along the way this is off the rails. **Chairman Lodge** interjected that there has been a lot of pre-work on this and they have tried to line this out to streamline the rulemaking process.

Representative McGeachin stated she very much understood Senator Coiner's concern. The preference is not place the bill on the amending order and follow with a trailer bill to address the concern.

Representative McGeachin in closing said this is a difficult issue and she respected the opinions of all the individuals that showed up to testify today.

Senator Coiner commented the group has done a great job and he does really appreciate the scope of practice being in statute tightly written all of those things he agrees with and feels confident about. His concern is with the time line and getting something out of balance before there is an opportunity to see the rules that will define everything a little more clearly.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1, 2, 3, 4, 5, 6, 7, 8, & 9).

MOTION

Senator Hammond moved to send H185 to the floor with a do pass recommendation. **Senator Bock** seconded the motion.

Senator McGee suggested the Bureau of Occupational License could inform committee members monthly regarding the status of rulemaking relating to this legislation.

Senator Darrington stated he was not at all troubled by the time line after hearing and reading it several times and believes it is workable. However, he warned that the sponsors of this bill should not write rules until the Board is appointed. He also suggested that a list of multiple names be submitted to the Governor and that no-one be so presumptuous as to write the rules prior to the organization of the Board and their consultation with the attorney. Personally he wants nothing to do with home births. His kids were born in a hospital where they belong, from his point of view, and the last one cost him \$69 bucks an ounce. In those days, that was a lot of money. Nevertheless, he must separate his

personal opinion from the public good is what he must do. He is opposed, in general, to more licensure bills. Every year there is one right after the other. John Hutchinson, Steve Millard's predecessor, he listed for me at least a hundred organizations would be in front of the committee seeking licensure. There have been the dieticians, the naturopaths, even the driving instructors and there will be the massage therapists someday, the aerobics instructors, the personal trainers, and the list will go on and on and on ad infinitum, and that is a promise. Generally and philosophically he is opposed to increasing licensure. He said he understood the value of this legislation and that is to control the practice professionally in a way that brings safety to births. Nothing has been said about insurance in this hearing. It was stated a year ago, in this committee, very clearly, that a purpose of this is to eventually cash in on insurance for doing home births. Insurance was a goal. **Senator Darrington** expressed concern that this would become a growth industry under the auspices of the state. It is an industry, that he recognizes there are some out there who want to consume midwifery as a matter of practice and he respects that right, but by giving them the certification of the licensure of the state the recognition of the state it may become a growth industry and that is not in the best interest in the long run for that to happen and that you cannot control because once you license it takes whatever course it takes and that's what it has to be. Regardless of how he votes in committee today, it doesn't guarantee his vote on the floor either way, but he wanted to raise these issues because every organization out there can make a case, this is just the tip of the iceberg on licensure bills and everyone can make a strong case which he respects and appreciates and can see the positives but would also wanted them to know that there are many, many, negatives associated with continuing down this path without criteria adopted by the legislature to provide you with such proposal which has always been rejected when it was proposed to begin with, with John Hutchinson years ago, because those who are not licensed are opposed. Thank you Madame Chairman for allowing me to indulge.

Senator McGee added that this committee has a history of dealing with those situations where we do not get the rules processed as intended and not fulfilling the statute, which happened this year.

Senator Coiner said this was his concern of what happened before all of a sudden we had temporary rules that the legislature never saw and then we had licensure out there under some rules that were less than stellar for that group and that's one of the concerns that bother him. To continue, when we first had the naturopaths he was very new to the process and thought there should be room for them to practice and they had both sides, supposedly at that time, together and represented and everyone said they were together and able to work together, but once there was a Board all of a sudden there was a whole other group that was represented on that Board that weren't there initially. That is when there was a wreck. There are probably some certified midwives out there that may or may not like this but would probably qualify for the Board. He would like to see it written much tighter than it is and just the aspect of it, that the Board cannot grant any licenses until rules come

before the legislature and are approved. Senator Coiner stated he could not support sending this forward and he would look at any other option but under these circumstances will not support this legislation here or on the floor.

The motion carried by voice vote. Senator Coiner voted nay.

Chairman Lodge thanked the committee for their indulgence, it has been a very long hearing and very important to the people that are here in the room.

ADJOURNED

Chairman Lodge adjourned the meeting at 5:38 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 17, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

Senator Bock moved to approve the minutes of March 4, 2009. **Senator Smyser** seconded the motion. **The motion carried by voice vote.**

H145 Relating to Sterilization

Jim Baugh, Executive Director, Comprehensive Advocacy, Incorporated, stated when Section 39-3902 was amended in 2003, the language in subsection 39-3902(6), was taken from a Hawaii statute incorporating constitutional and common law protections for people with disabilities against arbitrary, involuntary sterilization. The Hawaii statute uses the word "person" in this section. At some point in the development of the bill the word was changed to "adult". Recent cases have come to our attention involving involuntary sterilization of children with disabilities, making the change in wording significant.

The purpose of this bill is to restore the language to its original intent, and to provide statutory protections for people under the age of 18 who may be subjected to involuntary sterilization.

The statute does not apply to medical procedures for the general health of the patient, but which have the effect of making a person sterile, such as surgical removal of diseased or cancerous tissue. It applies only to procedures which are intended for the sole purpose of preventing a person from having children.

By limiting the application of the statute to "adults" there are no protections or standards for people under the age of 18 years. Some

parents have sought sterilization of their children before their eighteenth birthday to avoid the application of the statute. Adolescents and children should have the same standards and protections as adults when sterilization is sought.

Physicians and health care providers also need to know when these procedures can be performed and are entitled to the protections provided when they comply with the statute.

House Bill 145 would correct this error and make the constitutional protections and standards uniform for children as well as adults.

Senator Darrington asked if what Jim was saying was, "Parents or legal guardians of children under the age of 18 would not have the right to make the decision to have that child sterilized?" **Mr. Baugh** responded the parent or legal guardian would not have the unilateral right to make that decision. It would be necessary for them to go through the process that statute requires to establish that an adult who can't consent that it would be in their best interest to have the sterilization procedure done. If they met the criteria in the statute, they would still be possible for someone under the age of 18, say a person who is 17 and getting married, to have a sterilization procedure but they would have the same protections that adults have. **Senator Darrington** asked if that had to take place in District Court? **Mr. Baugh** replied yes, it would.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

MOTION

Senator McGee moved to send H145 to the floor with a do pass recommendation. **Senator Smyser** seconded the motion. **The motion carried by voice vote.** **Senator LeFavour** will sponsor the legislation.

S1146

Food Establishments

Russell Duke, Directory, Central District Health Department, representing all seven public health districts throughout the State of Idaho, stated S1146 revises the Food Establishment Act in Idaho Code, Title 39, Chapter 16.

The public health districts currently charge \$65.00 for a license fee, which covers 22% of the cost to deliver the service.

The purpose of the change in fees is to shift a larger share of the cost of the food safety program from the taxpayer to the food establishments.

We have made the following changes to our original bill:

In the definition section

The references to high risk and medium risk food establishments have been removed and a definition of a commissary has been added.

These changes were made because high risk and medium risk are no longer fee categories that were included in the original bill.

The definition of a commissary distinguishes between fully contained mobile units and those with mobile units plus a commissary where food is stored and prepared for use on vending carts.

Under the definition of intermittent language has been added to exclude farm fresh ungraded egg vendors.

In regard to fee structure, this bill includes a four tiered fee structure.

The smallest vendors, such as those setting up a booth at a county fair or at a community market, will continue to pay \$65.00, the same fee they have paid since 2002. In addition this legislation will allow them to operate anywhere in the state paying only one \$65.00 annual license fee. Today they pay a fee for every three events and when they cross district boundaries. This also includes full service mobile units. Mobile units are units that are self contained.

The next step-up is mobile units with commissaries. This type of food establishment requires two inspections. One inspection for the commissary where the food is stored and prepared and clean up occurs and the second inspection occurs at the mobile unit, such as the hot dog cart. This type establishment will pay \$75 in 2010 and \$85 in 2011.

All other vendors, with exception to those with more than two licenses under common ownership on the same premises, will pay \$95 in 2010 and \$125 in 2011.

The largest businesses defined as those with more than two licenses under common ownership on the same premise will pay \$107.50 in 2010 and \$150 in 2011.

The public health districts have taken the direction of the Joint Finance and Appropriations Committee (JFAC) to look at fees as a means to balance our budgets.

The original proposal had industry paying 67% and the taxpayer covering 33% of our cost to deliver this state mandated food safety inspection program. This proposal has industry paying on average of about 40% and the taxpayer paying 60%.

Mr. Duke respectfully requested that the committee support S1146 and

thanked them for their time.

Chairman Lodge stated Mr. Duke, Mr. Kane, Mr. Eiguren, Ms. Eaton, worked really hard with all the other people that were involved in this to come to a compromise especially during these tough economic times. And she wanted to commend Mr. Duke for taking the heat for all the other health districts and organizations throughout the State. She hoped they appreciated the hard work he has done on this legislation.

She then asked, as mentioned in his testimony, food carts have a commissary and both require an inspection. If the food carts are stored at the commissary wouldn't that take one inspection or are the carts stored elsewhere? **Mr. Duke** replied although many of the carts are stored at the commissary, the Public Health Districts prefer to do an inspection where the carts are in operation. This affords the opportunity to view, in action, the cooking, selling, food handling, cooking temperatures, etc.

Vice Chair Broadsword commented there is a resort in her district that has a restaurant and bar which are co-located, and a detached convenience store located 100 feet down the road. Will this require three fees? **Mr. Duke** replied there is the provision of multiple licenses on one premise with one owner. If the convenience store is down the road, it would require a separate fee. If it is one owner, they could certainly apply for one permit and pay the higher fee, \$150, but he was uncertain. Typically, the \$150 fee relates to large grocery stores with multiple departments such as a deli, bakeries, meat under one roof. **Vice Chair Broadsword** stated currently they are paying for three separate inspections, three separate fees, so if one gets a violation the others will not be affected. **Mr. Duke** replied in the case of the large grocery store they are not paying three fees. They actually get four or five individual licenses and pay one fee. For example, if the deli section had an issue, they would not want the entire store closed. The scenario described, where there is a bar and a restaurant that are slightly separated they should get two licenses, pay one fee, \$125 dollars.

Chairman Lodge commented this was the first time there has been a sign in sheet where everyone wishing to testify was in favor or the legislation. She then asked if there was anything anyone wished to add to the discussion.

Roy Lewis Eiguren, representing the Northwest Grocery Association, stated there is the three-year provision, page 3, Section 39-1607, (4), by which there will be a review of, and report to, the Health and Welfare Committees of the legislature, the cost data associated with the operation of the food inspection program as well as actions taken to increase the efficiency of the program. There is no more significant issue than food

safety and the Association is very comfortable and pleased with the outcome.

Lin Hintze, Custer County Commissioner, Board Member, Eastern Idaho Public Health District Seven, and food vendor, representing himself, stated this has been something where the system has really worked. He expressed appreciation for the legislation and Mr. Duke, Mr. Kane, the big food stores and others for their efforts. This legislation affects everyone and because everyone put in their input they now have a co-operative, core main agreement that works. **Mr. Hintze** said he hoped other organizations could take as an example how this worked, go to a committee and come out with a solution. He expressed how proud he was to be a part of this and that he was equally proud of everyone involved. **Mr. Hintze** thanked the Chairman and the committee.

Bill Clark, Kuna Farmers Market, stated he was impressed, surprised, and pleased that his comments about eggs being sold at a farmer's market by his 10-year-old daughter made it into the legislation. He is grateful that they can sell farm fresh eggs at the market and not worry about their status in the agricultural market. He commented that he still believes markets were intended to be exempt and not be classified as food establishments along with the fraternal organizations and the non-profits. He is not an expert but his reading of the food code is that if fresh vegetables and produce are sold they are an agricultural market and he became interested when agricultural markets were being considered in the fee process. **Mr. Clark** asked that he be included in any future discussion and work relating to this area.

Senator LeFavour said in response to Mr. Clark, agricultural markets remain exempt and that only those entities serve foods other than those things qualifying for agriculture products that are processed in some way or create risks. Also, a very interesting discussion took place around the eggs that really do not differ from fresh produce, in that they are not processed in any way.

Karen Ellis, Manager, Capital City Public Market, and Edwards Greenhouse Market, commented she would like to commend everyone involved in this legislation. This is a step in the right direction and the bottom line is to protect the small producer and help them to continue to sell at the farmers markets.

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 LeFavour moved to Supporting documents related to this

testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1). end S1146 to the floor with a do pass recommendation. **Senator Coiner** seconded the motion. **The motion carried by voice vote. Chairman Lodge and Senator Hammond** will sponsor the legislation.

Chairman Lodge commented two students, Ashley Bordewyk and Toby Rood, from the Boise State University Nursing program were in attendance, and asked them if they had been following this issue and procedure or if this was their first time? **Mr. Rood** replied that Mr. Duke visited their class, gave a presentation on food safety and recommended they attend the committee hearing. **Chairman Lodge** queried if either of them had questions for the committee. **Ms. Bordewyk** commented that she didn't realize there had been two bills relating to this issue and wondered if this was an unusual process. **Chairman Lodge** replied that the original bill could have been amended but often a new bill comes back to the committee.

ADJOURNMENT **Chairman Lodge** thanked the committee and all in attendance. The meeting was adjourned at 3:42 P.M..

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 18, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Coiner, Hammond, Smyser, and Bock
- MEMBERS ABSENT:** Senator LeFavour
- EXCUSED:** Senator McGee
- 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.
- MINUTES:** **Chairman Lodge** called the meeting to order and welcomed guests and participants.
- PRESENTATION** **Doug Farquhar**, Director of Environmental Health, National Conference of State Legislatures provided a presentation and information to the committee of federal efforts and state authorizations pertaining to environmental health issues related to lead hazards, carbon monoxide, pesticides, chemical hazards, rat infestations, radon, mold and children's consumer safety standards.
- Barbara Ross**, Attorney, Environmental Protection Agency (EPA), reviewed with the committee the EPA's new rule, issued under the authority of Section 402(c)(3) of the Toxic Substances Control Act (TSCA), aimed at protecting children from lead-based paint hazards in places they frequent. The rule applies to renovators and maintenance professionals that work in housing, childcare facilities and schools built prior to 1978.
- The rule Lead: Renovation, Repair and Painting Program requires that contractors and maintenance professionals be certified; that their employees be trained; and that they follow protective work practice standards. These standards prohibit certain dangerous practices, such as open flame burning or torching of lead-based paint. The required work practices also include posting warning signs, restricting occupants from work areas, containing work areas to prevent dust and debris from spreading, conducting a thorough cleanup, and verifying that cleanup was effective. The rule will be fully effective by April 2010.

A perspicacious discussion occurred following the presentations.

ADJOURNMENT **Chairman Lodge** thanked the presenters and participants. The meeting adjourned at 3:45 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann p Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 23, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, and Bock
- MEMBERS ABSENT:** Senator LeFavour
- 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.
- MINUTES:** **Chairman Lodge** called the meeting to order and welcomed guests and participants.
- Vice Chairman Broadsword** moved to approve the minutes of March 5 and 10, 2009. **Senator Hammond** seconded the motion. **The motion carried by voice vote.**
- Senator Bock** moved to approve the minutes of March 9 and 11, 2009. **Vice Chairman Broadsword** seconded the motion. **The motion carried by voice vote.**
- H46aa** Relating to Social Work Licensing Act
- Roger Hales**, Attorney in private practice, representing the Bureau of Occupational Licenses and the Board of Social Work Examiners, stated the Board of Social Work Examiners is updating its requirements in section 54-3202, Idaho Code, by striking the reference to a degree in a related field. This change reflects the degrees now offered at Idaho Colleges. It also amends section 54-2309, Idaho Code, to increase the cap on application fees and renewal fees from \$75 to \$150.
- There is no impact on the General Fund. These changes would increase the caps for applications and renewal. Fees would need to be established by board rule in order to impact the Bureau's dedicated fund.
- Senator Darrington** explained the amendment deletes line 7 through 28, page 1, which does not take 3202 out of code, it just strikes it from the bill, correct? **Mr. Hales** responded yes.
- Vice Chair Broadsword** commented this bill doubles the fee because of

a deficiency in their account, or is the cap being doubled and they are not at the cap, is that correct? **Mr. Hales** replied the top fee is \$70 dollars, the other fee is \$60 dollars so they are bumping against the cap. It was proactive to raise the cap so this circumstance would not have to be dealt with in the future if fees needed to be raised in the rules.

MOTION

Vice Chair Broadsword moved to send H46aa to the floor with a do pass recommendation. **Senator McGee** seconded the motion. **The motion carried by voice vote.** **Senator Smyser** will sponsor the legislation.

S1158

Relating to the Medically Indigent to Provide Certain Department of Health and Welfare Responsibilities

Senator Dean Cameron stated the proposed legislation provides revisions and additions to Chapter 35, Title 31, Idaho Code, relating to the medically indigent. The Idaho Medically Indigent Health Care program provides emergent medical care to uninsured individuals and allows hospitals and medical providers to obtain compensation for services rendered. The bill requires the Department of Health and Welfare to conduct utilization reviews on medical claims, provide for an early determination as to whether individuals are Medicaid eligible, and perform third party recovery of claims paid by the county and the state. This bill will also increase the county deductible from \$10,000 to \$11,000. The Medically Indigent Health Care program and the state General Fund are responsible for all medical bills in excess of \$11,000 in a 12-month period.

Section by Section Outline of Modifications: Idaho Code 313502 is the current definition section of the Medically Indigent Health Care program. Modifications to Idaho Code 313502 include alphabetizing the current definitions in code and changes to definitions section regarding utilization management and applications for assistance. This section also includes minor modifications to current definitions as agreed to by the counties, the hospitals, and the state.

Idaho Code 313503 is the current section of statute that outlines the county responsibility and the county commissioners' responsibilities. Modifications to this section include an increase in the county deductible from \$10,000 to \$11,000 and requirements to work with the Department of Health and Welfare regarding Medicaid eligibility and utilization management.

Idaho Code 313503A outlines the powers and duties of Medically Indigent Program Administrator. Modifications to this section include requiring the administrator to only pay claims above \$11,000 and to work with the Department of Health and Welfare regarding Medicaid eligibility and utilization management.

Idaho Code 313503C is a new section that creates the powers and duties of the Department of Health and Welfare. The new section requires the department to design and create a utilization management program and

third-party recovery system engage contractors to perform the new functions implement a Medicaid eligibility determination process for the Medically Indigent program work with the Idaho Hospital Association (IHA) and the Idaho Association of Counties (IAC) to develop by July 1, 2010 a uniform application for use by all three entities work with the counties and the administrator regarding eligibility, utilization management, and recovery and promulgate rules.

Idaho Code 313503D is also a new section that requires the counties to fully participate in the costs of the utilization management and third-party recovery system. The contribution for each county will be calculated by the department and set by rule.

Idaho Code 313503E is a new section that provides a statutory backbone for processes that the hospitals, the counties and the Department of Health and Welfare must follow with respect to Medicaid eligibility determination.

Idaho Code 313503F is a new section that covers medical homes for the indigent population. This section requires the department to, by rule, create a community-based care system for nonemergency services that the hospitals will use for referral of uninsured patients for nonemergency care.

Idaho Code 313504, 313505, 313507, 313508, 313509, 313510, 313511, 313519 are all sections of the statute that outline the processes the hospitals, counties and state follow regarding the Medical Indigent program. These modifications include adding the Department of Health and Welfare to the process for the Medicaid eligibility determination and utilization management, as well as allowing the hospital, the county, and the state to exchange information regarding the applicant. These sections also include some minor process modifications agreed to by the hospitals, the counties, and the department.

Idaho Code 313517 modifies the current statute to add state representation to the medically indigent board and makes a minor modification to the reimbursement of expenses for board members. This section also requires the Legislative Audit division to perform audits on the state expenditures for the medically indigent program. Finally, this legislation has intent language that requires that the new changes be reviewed in three years.

The change in the deductible from \$10,000 to \$11,000 results in a \$1,000,000 reduction in state General Fund expenditures however, upon passage of this Legislation the state Medically Indigent program will still require \$5,200,000 of state funds to continue to pay the same amount of bills in FY 2010 as it did in FY 2009.

The Department of Health and Welfare estimates an initial cost in FY 2010 of 2.0 fulltime positions and \$381,900 in General Funds. For FY 2010, \$161,700 of the total \$381,900 is onetime in nature for contract expenditures and capital outlay.

This bill also includes a fiscal impact to the Department of Health and Welfare for the utilization management and third-party recovery services. However, until the counties, the hospitals, and the department fully design the process flow and contract requirements as required by this legislation the state fiscal impact is undetermined. This legislation requires the Department of Health and Welfare to propose rules in the future regarding the county contribution for these services and a fiscal impact to the state for the department's budget will be determined at that time.

Vice Chair Broadsword asked has the cost of the contractor that will be shared between the counties, been determined? **Senator Cameron** replied that has not been determined. The Department has a third party contractor for utilization management on the medicaid system. One of the things that could be done is an expansion of that contract. However, that would be up to the Department and the Director as to whether to expand the current contract or go out for a request for proposals (RFP). The preference is to go out for a RFP and hold this separately to better able tracking of cost savings. Discussions with third party contractors indicated that there are a couple of ways to go. It could be a per person billing process where every client that is handled will be a charge to the state and to the county, or it could be a shared savings, if savings are incurred a percentage can be kept.

Chairman Lodge questioned the impact on the Department of Health and Welfare, the IBIS and the MMI systems, which are currently not up and running, and asked for an explanation of how this would fit in. **Senator Cameron** replied originally the thought was to involve the Department to pay the claims, track the claims and track the patient, etc., however, the concern for the Department was if claims were to be paid patients would have to be entered into the Department's system and the system is not ready and won't be for another year. For that reason, the claims paying responsibility was left with the Catastrophic Fund Board (Cat fund).

Chairman Lodge said, "there would not be any physical impact to the Department at this time, correct?" **Senator Cameron** replied initially the Department thought they would need about \$400,000 and six FTPs, however, the Department now estimates an initial cost in FY2010 of \$62,700 for handling the development of the Medicaid eligibility determination process which funds six months of costs for two FTPs. Future application processing costs are yet to be determined. As the Department begins to work through the process there is a possibility, additional personnel may be needed than described in the fiscal note.

The desire is to keep the workload down but the Departments expertise is needed to issue the RFP for the third party contractor.

Amy Castro, Legislative Budget & Policy Analyst, interjected, the latest fiscal note is right around \$381,000 and the two FTPs remains consistent. This includes some one time funding to help the Department with the technical contract negotiations when working with the counties. This would be reduced on an ongoing basis. But, this does not include ongoing funding for out years. **Chairman Lodge** commented this is certainly higher than \$62,000. **Ms. Castro** said most of that is the

contract expertise, so the staffing is a bit higher but the Department thought they needed an Administrator because of the logistics of negotiating with forty-four different counties. That is a little higher level than they initially thought. **Chairman Lodge** noted that they are looking at maybe \$200,000 to \$400,000? **Senator Cameron** replied yes, but with just two employees.

Chairman Lodge asked if there were any more questions or comments.

John Watts, Veritas Advisors, representing Idaho Primary Care Association, commented they were excited and honored to be a part of this legislation and they are pleased that the issue, which Community Health Centers have seen for a long time, is being addressed. The Catastrophic Care Fund continues to grow and grow and is typically providing services to people that do not have insurance. The Community Health Centers are in the business of trying to help individuals that are uninsured receive the ongoing primary preventive care that they need to stay out of the emergency rooms. They are also required to provide some of the cost of care for their own services that they receive. Senator Cameron did an outstanding job of explaining this legislation. On page 6 line 34, on page 7 line 26, the Association helped with those two definitions, and on page 11 lines 14 through 20 the Association is looking forward to working with the Department of Health and Welfare and fleshing out what is going to be a medical home program for the state of Idaho. Some of the members of the committee may know that the Community Health Centers presently are finalists for a grant program in creating a medical home system. Senator Cameron is on the Recommendation Advisory Board for that. That will be helpful. Good bill should pass, complicated bill, long over due.

Tony Poinelli Idaho Association of Counties (IAC), said he was glad to be before the committee. Credit must be given to the Chairman of the Joint Finance and Appropriations Committee (JFAC) for his lead and perseverance in this process. Any time a new program is created there are concerns. The IAC legislative committee did a support position. There are a lot of things that are contained within this legislation that is good ideas and Senator Cameron mentioned a number of them. This will help working relationships between the Counties and the Department. The sharing of information will help dramatically. The Medicaid Determination is very important and will help the Counties and the health care providers. Also, there are about seven or eight counties right now that contract with medical professionals to do claims reviews and other things both for mental health and medical. That is built into this legislation. It is good and those counties that use this type service feel very strongly about it. However, within the three-year period it is anticipated that cleanups may be needed which is normal for a bill of this magnitude. Madame Chair, the IAC is supportive of this legislation.

Steven A. Millard, Idaho Hospitals Association (IHA), commented he was involved in every single aspect of this legislation. Chairman Cameron is a task master extraordinaire. He was skeptical going into this process and thought it could not be accomplished. The IHA is supportive of this

legislation but like Mr. Poinelli's members our members are nervous too. They look at this very complex bill and say there is another layer of bureaucracy, it's going to change everything we do and he says just trust him. This is a trust me situation for the IHA, however, the rules are going to put into place a lot of detail that has been missing. There will be negotiated rulemaking and we will be at the table with the IAC and the Department. Madame Chair the IHA is supportive of this legislation and urges the committee to send it forward with a do pass.

Representative John Rusche commented he was in attendance as support for Chairman Cameron. If anyone had tried to design a system like we have for indigent care they couldn't do it. It is so complex and is duplicative. This is an attempt to bring some consistency and efficiency to, what basically is forty four-different health plans and one reinsurer. **Representative Rusche** said he worked on this bill and gave it his endorsement.

Dick Schultz, Deputy Director, Health Services, Idaho Department of Health and Welfare, stated the Departments support of this legislation.

Senator Cameron stated he would like to take the opportunity, with the new information received from the Department, a new fiscal note and statement of purpose would be issued with the corrected information.

Senator Cameron said there were a lot of people involved in bringing this forward and wanted to thank, in particular, Amy Castro, Paige Parker, Representative Rusche, Representative Block, Representative Collins and many, many more.

Chairman Lodge also wanted to thank Ms. Castro and Mr. Parker for all the work that they had done in helping to create this legislation.

Senator Darrington said Mr. Watts had made mention of a definition of Medical Home and he had not noted it but would like to know what the thought is out there.

Senator Cameron replied that in the bill there is a definition of a medical home on page 6, lines 34 through 36. On page 11, line 14 through 20 is the community-based system the Department will create by rule. The desire is that after a person comes through the hospital and they are determined to have a digestive disorder and they need to take certain medication. Rather than saying take the medication and we'll see you the next time you have an attack, the patient will instead be referred to a community health center and report to them. The desire is to prevent those individuals from repeatedly showing back up in the emergency room at the hospital. It is believed that money can be saved by helping them get their treatment initially early on and helping them maintain a medical home for that treatment. **Senator Darrington** commented that those who are indigent may use community health centers as well as emergency rooms or hospitals or doctors offices. Is that correct?

Senator Cameron replied yes, although remember that the hospitals under current federal law are the only ones required to see all covers. So

the Cat Fund and the whole catastrophic system is really being designed around mostly those individuals that are being forced on the hospitals. But obviously, a couple of things, they have a right to submit a claim and it may be determined by the third party administrator that it is more cost effective to have a person go to a community health center rather than having them return to the hospital. It may be determined that the prescription and doctor's visit may be paid in order to keep that from coming back.

Senator Darrington commented that they all knew that there were some counties that automatically reject claims from the provider as a matter of practice sometimes. Does this bill partially overcome that by the medicaid eligibility analysis? **Senator Cameron** replied yes. One of the reasons they are able to reject in some cases as a matter of practice is because there has not been a determination whether they are medicaid eligible. There are other reasons why they are rejecting claims as a matter of practice and mostly that has to do with the confrontation that is occurring between counties and hospitals. There are some counties where that is not the case and other counties where the size of the claims are so large they are initially denying almost every claim. This bill will help avoid that by having the Department involved on the front end, having the information to the county in a timely matter in the front end. In the current system the first time the counties or the state get involved is after the claim has occurred. It is so far down the road that there is no chance to do anything about it. The desire is to get involved on the front end, help the determination of treatment, help in making sure the claims are accurate, make sure they are medicaid eligible or not and help in that determination process. All this information will improve the ability for the county to make good wise decisions.

Senator Darrington said back in the old days when he chaired the committee there was a meeting with the Administrators of three Salt Lake Hospitals. He and Steven Millard had a discussion about it today. Because of the fact that we had the counties in the Magic Valley, in Southeast Idaho the routine was to transfer patients needing that level of care to the Salt Lake Hospital that offered that high level of care. Our State system was not as developed as it is today. Salt Lake would bill the counties at the going rate and the counties would routinely reject the bill because the Salt Lake Hospital was settling with Utah counties at a much lower rate, not really diagnosis related group (DRG) but something not dissimilar to it. The question that he asked that day in the Gold Room hearing, would you sooner pay your lawyers to sue our counties or pay them much less and settle for less from the counties? They all left the room, got on their airplanes and flew back to Salt Lake. It was a remarkable occasion. He ran them off. The question is did you ask a similar question? **Senator Cameron** said he was not sure they asked it in quite that direct of terms. The bill does envision the State can enter into agreements with other States, it is not mandatory. There are some states that have reciprocal agreements with Idaho. That does not change in this bill. Mr. Poinelli commented there are three states that have reciprocal agreements with Idaho, Utah, Washington and Oregon. IAC is working with the Governor's Office and is asking the Governor to rescind

the Washington agreement. The providers in Idaho have all the capabilities with exception to the burn unit and a few other small things.

MOTION

Senator McGee moved to send S1158 to the floor with a do pass recommendation. **Senator Darrington** seconded the motion.

Senator McGee stated this is an issue that has been discussed for a long time. This is a very important issue in all of our communities. The fact that Senator Cameron was able to get all these parties together in one room for two hours an evening is tremendous. Compliments to Senator Cameron.

Vice Chairman Broadsword expressed appreciation for the efforts put forth on this legislation.

Chairman Lodge expressed that she knew how difficult it is to get a big group of people together, but for Senator Cameron to get them together and have them keep coming back, that is really something.

The motion carried by voice vote.

ADJOURNED

Chairman Lodge thanked all the participants and adjourned the meeting at 4:11 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: March 30, 2009

TIME: 3:00 p.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock

MEMBERS ABSENT/ EXCUSED: NONE

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

Senator Bock moved to approve the minutes of March 16 and 17, 2009. **Senator Hammond** seconded the motion. **The motion carried by voice vote.**

Senator Hammond moved to approve the minutes of March 18 and 23, 2009. **Vice Chairman Broadsword** seconded the motion. **The motion carried by voice vote.**

H146aa Relating to the Idaho Residential Care or Assisted Living Act

Kris Ellis, Lobbyist, Health Care Association (IAC), stated the purpose of this legislation is to amend the *Idaho Residential Care or Assisted Living Act, 39-3303, Idaho Code, Section 1, Payment Levels*, lines 19 through 32. This amendment adds language to clarify that private pay clients in assisted living facilities shall be assessed for their needs and the assessment and the negotiated service agreement shall determine the rate that is charged. There shall be a 30-day notice required prior to a facility changing its billing practices or policies. If the client has a change in condition (for better or worse) a 7-day notice shall be required to have the rate reflect the current condition. This legislation also allows for facilities to bill for the use of furnishings and supplies as per the admission agreement for private pay clients. This currently is not allowed in rule. There is no fiscal impact to the General Fund.

Senator Bock asked what is being done now if we have clients who have

different needs and therefore require different amounts of time for support. **Ms. Ellis** replied it is like in any personal business. Different businesses have different ways of doing things. Some will say if you need assistance with bathing it is a line item billing but regardless of how long that takes its, \$200 per month. Some will say, if you need assistance with bathing it's \$15 dollars an hour. There is not a consistent formula for how that is done. **Senator Bock** commented by her example, it sounded like the system was working so why is this change necessary? **Ms. Ellis** replied the system she explained is illegal according to the Department. The Department would cite the facility for either of those examples for an ala carte billing system which is currently not allowed in the Department's interpretation of this rule. During routine inspections, several facilities have been cited for this deficiency and only this deficiency. **Senator Darrington** queried in the current rule, 16.03.22, 430 - 05, Basic Services, are the services provided today, and the enumerated services listed are the services that are to be provided in the base rate correct? **Ms. Ellis** replied yes. **Senator Darrington** stated his interest in this was personal as his mother prior to her death at 97 years old was in a facility that utilized the ala carte menu of services and it worked very well.

Chairman Broadsword asked if the flexibility is not given to private facilities, to determine for themselves what to bill for and how to bill for it, wouldn't the overall costs for everyone be more? If all these things need to be taken into consideration, they would have to charge more rather than allowing them freedom and the flexibility to charge as needed services. **Ms. Ellis** replied that would be the IAC's argument. Even when clients are placed in categories, whoever is at the bottom of that category is going to be subsidizing the client at the top.

Robert Vande Merwe, Executive Director, Idaho Health Care Association (IHCA), testified in support of the legislation. **Vice Chair Broadsword** asked if facilities bill in fifteen minute increments for all services for medicaid, wouldn't it be easier to treat all clients exactly the same and have one system for everyone? **Mr. Vande Merwe** replied medicaid uses a universal assessment instrument (UAI) which is very complex and was not designed for assisted living. To use that instrument for private pay clients in assisted living would be more confusing to our residents than the system that is now used. **Senator Bock** asked how medicare patients are treated differently than private pay patients. **Mr. Vande Merwe** responded the regulation is the same for both. The pay is different. Medicaid will assess and dictate the amount paid for service.

Loa Perin, Volunteer, American Association of Retired Persons (AARP) testified and submitted written testimony in opposition of this legislation.

Vice Chair Broadsword commented to address Ms. Perin's concerns, amendments to the legislation have been made by the House of Representatives removing section (d). She also stated that this legislation is just the framework from which rules will be developed. **Vice Chair Broadsword** recommended AARP participate in the rulemaking process if the legislation goes forward and becomes law. Ms. Perin replied yes, AARP would participate. **Senator Bock** commented in light of Ms. Perin's

testimony in opposition to the legislation, how would she structure payments for services and how would she make sure residents were not being over charged. **Ms. Perin** replied a definition of room and board and what that consists of. If a client provides their own furniture should they be compensated. If a person contracts a seasonal illness such as the flu that required additional care for a short period of time, should there be an additional charge for that. Experienced as a registered nurse working in assisted living circumstances, she had witnessed when extra care was provided and charged extra help was not scheduled. The ratio for care needs to be adequate to provide for the care they are charging for.

Senator Bock said lets say there is a resident who needs special bathing and another resident does not creating a cost difference between the two, how would that be accounted for? Should the cost be averaged over the facility population? **Ms. Perin** replied, for example, when the facility performs the initial assessment of a paraplegic it is understood the individual will require more care than a self-sufficient individual and the billing, based on the assessment, should reflect that. The fear with ala carte billing is the ability for facilities to charge additional dollars for services that should be inclusive based on the initial assessment. With this system there is opportunity for clients to be taken advantage of by the facilities.

Senator Hammond asked **Ms. Perin** if she was advocating for the same rate regardless of service provided? **Ms. Perin** replied no. What is advocated is that clients be informed up front, clearly and transparently what they will be charged. **Senator Hammond** asked what made her believe that with the change in this legislation they will overpay? **Ms. Perin** replied the concern came about when a patient was charged, in addition to the monthly costs, several hundred dollars per month retroactively for care provided without notifying the financially responsible parties. When the individual recovered, the rate was not reduced but remained at the higher level.

Senator Darrington commented that what **Ms. Perin** advocates sounds like what the legislation advocates. Paragraphs (2), (b) of 39-3303 states residents who are not clients of the department shall: receive a full description of services provided by the facility and associated costs upon admission, according to facility policies and procedures. A thirty (30) day notice must be provided prior to a change in facility billing practices or policies. The bill does not authorize, practice would not authorize, going back on the client and say we had to help him bathe and that wasn't agreed to in the beginning so he will be billed extra. He then asked how does she explain paragraph (b) in context of your answer to Senator Hammond? **Ms. Perin** replied smaller facilities' charge for what they give, but when you get some big corporations, it is understood they are in it for the dollar and they are going to get it. In this day we can't afford to give them carte blanc on what they can charge.

Senator LeFavour commented it seems the facility does an assessment but it doesn't seem that there is any requirement for them to notify the client as to the basic set of services and maybe that's what's missing. If she were to go into one of the facilities, she would want to know up front

what to expect as part of the basic package. Just being there, if nothing happens to you, what are you going to be charged for just being there. What are the conditions of basic residence? That seems to be something that should be required to be disclosed up front. The basic service is not disclosed. **Senator Darrington** stated the answer to that is in Paragraph (2), (b) of the legislation. **Vice Chair Broadsword** added the legislation states the client will be assessed for basic needs and specific services which determines the rate that will be charged. They receive a full description of services and associated costs. A thirty (30) day notice will be provided prior to any change in billing practices or policies. Senator LeFavours concerns are covered in the bill.

Senator Bock said with regard to the thirty (30) day notice it only applied to changes in facility billing practices and policies. Paragraph (d) pertains to notification of changes in the clients' condition or cost. Why was paragraph (d) removed? **Ms. Ellis** replied (d) was removed at the request of the Deputy Attorney General (AG) for the Department of Health and Welfare. The individual negotiated service agreement is required to be updated every time there is a change in the client's condition, which does not allow for a seven-day change. The AG opinion stated seven days was too long and conflicted with existing statute. Item (d) was added to help the advocates because there have been issues with retroactive billing, however, according to the Deputy Attorney General, retroactive billing currently is not allowed and (d) would actually broaden that condition rather than narrowing it. **Senator Bock** stated the first sentence of (d) still would be appropriate regardless of the objection. **Ms. Ellis** addressed the basic services issue by saying currently the definition of basic services in the rules lists everything but the kitchen sink. That is part of the problem in that basic service can't be defined. The basic services, as listed in rule 16.03.22, 430.05, state basic services to be provided by the facility at no additional cost to the resident include room, board, activities of daily living services, supervision, assistance and monitoring of medications, laundering of linens owned by the facility, coordination of outside services, arrangement for emergency transportation, emergency interventions, first aid, housekeeping services, maintenance, utilities, and access to basic television in common areas. Basic service could be for someone who needs a lot of medications, who needs help with bathing and it would still include all those listed services for someone who did not need them even if they are in the same facility according to the existing rule it would be the same amount. This is part of the problem and this is why this legislation is being brought forward. Basic services as currently defined in rule does not allow for flexibility.

Senator LeFavour expressed concern that the legislation does not require any kind of disclosure of what a basic service contract would include. It does state that all the different costs of services have to be disclosed. There is worry that it doesn't say that and it could be more clearly worded. **Ms. Ellis** responded in rule the full description and definition of services would include those basic services as it is now only defined more accurately.

Mark Maxfield, Owner/Operator, The Cottages Assisted Living Facilities,

operating in Payette, Weiser, Mountain Home, and Middleton, Idaho, Social Worker and Advocate, testified in support of the legislation. **Senator Darrington** asked if Mr. Maxfield's facilities accept medicaid. **Mr. Maxfield** replied yes. **Senator LeFavour** asked if Mr. Maxfield thought it wasn't the role of Government to provide basic consumer protection? **Mr. Maxfield** replied, "yes, especially for the disadvantaged."

Douglas Clagg, Owner/Operator, Spring Creek Assisted Living Facilities, testified in support of the legislation. **Vice Chair Broadsword** questioned what his facility does in regard to additional charges. **Mr. Clagg** replied his facilities bill on level of care. They do have a point system that they use that has roughly 78 points total that takes a client from a level 1 to a level for special needs. For example, in the portfolio of over 200 clients of Spring Creek there are some clients that barely make level 2 and there are individuals that are at the top of that spectrum that really should be a level 3 care. Personally he believes this methodology of providing customized care and billing is much more accurate.

Michelle Creech, Ombudsman, Area Agency on Aging, Advocate for the Elderly, testified in opposition of this legislation. **Ms. Creech** provided copies of a seven-page ala carte resident assessment form which was discussed during her testimony. **Vice Chair Broadsword** stated most legislation is a framework which most departments fill out by rule. The issues addressed could be addressed in rule. Vice Chair Broadsword then asked if **Ms. Creech** participated in the attempted rulemaking process. **Ms. Creech** replied yes she had participated in the process for over a year. What she heard in the final hearing was support from some providers. The bill is a framework but if the framework is missing pieces then it won't provide for rules that benefit the residents. **Senator Bock** asked if there are pieces missing from the framework, what pieces would **Ms. Creech** add? **Ms. Creech** said she would include a piece about having a mechanism for a resident or their representative to appeal a billing charge. **Senator Bock** asked why couldn't that be provided by rule? **Ms. Creech** answered she thought it could be addressed in rule, however, she had concerns that not all the pieces will be addressed.

Denise Hall, Administrator, Hillcrest Retired and Assisted Living, testified in support of this legislation. **Vice Chair Broadsword** stated she thought there were rules that prohibited clients with severe mobility issues to live in an assisted living facility due to fire code issues. **Ms. Hall** replied no, the rules are very broad relating to what an assisted living facility can take as long the clients needs are met. **Senator LeFavour** asked Ms. Hall what is the basic charge at the Hillcrest facility? **Ms. Hall** replied Hillcrest does not charge by level they charge by the point. A one bedroom apartment for assisted living begins at approximately \$2400 dollars per month. This includes all utilities and three square meals per day. Based on the care required, points are charged at \$6 dollars per month.

Dale Eaton, Ombudsman, Area Agency on Aging, testified in opposition to this legislation. **Vice Chair Broadsword** commented that she did not see where in the legislation it says it has to be ala carte billing or by level. She then asked if he could point out where in the legislation is it stated?

Mr. Eaton replied in item [c] it states “be charged for the use of furnishings, equipment, supplies and basic services as agreed upon”, that is ala carte. This is trying to cover the whole spectrum of what the resident is receiving in the facility. **Vice Chair Broadsword** said when compared with basic services, the client is charged for all of those either way. **Mr. Eaton** replied yes in the rule there are defined basic services. **Vice Chair Broadsword** asked if **Mr. Eaton** thought they couldn’t come up with a rule that would address that very concern? **Mr. Eaton** stated yes he did believe this could be covered in rule. He said he did not know why the statute was needed if it could be covered in rule.

Kathi Brink, Administrator, Ashley Manor, Nursing and Assisted Living facilities, and Executive Director, Idaho Health Care Association, testified in support of this legislation.

Tracy Warren, Program Specialist, Idaho Council on Developmentally Disabled, testified in opposition of this legislation. **Vice Chair Broadsword** asked with whom did they work with from the Department during the negotiated rulemaking process? **Ms. Warren** stated they were not involved in the process.

Cathy Hart, Ombudsman, Idaho Commission on Aging, testified as a family member of a parent living at a Hagerman, Idaho, assisted living facility, in opposition to the legislation.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachments 1, 2, 3, 4).

MOTION

Vice Chair Broadsword moved to hold H146aa in committee at the call of the Chair. **Senator Smyser** seconded the motion.

Senator Darrington stated this is a good bill which he understands thoroughly. Having experience with assisted living, he felt this worked very well, however, would respect the sentiments of the Committee and Senator Broadsword’s motion.

Senator Hammond stated he agreed with Senator Darrington and expressed that he was not concerned because the rules that are developed will still have to come before the committee.

Senator Bock stated the deletion of item (d) in the legislation was a mistake. He believes most of the concerns discussed today would be covered in rule.

Senator Coiner commented he too agreed with Senator Darrington. He believes most of the concerns discussed today would be covered in rule.

Senator LeFavour commented it did seem reasonable to allow the parties to go back to the table to come up with something that provides a little better comfort level.

Chairman Lodge asked the sponsors how much time did they think they would need to come up with a revision.

Mr. Vande Merwe responded they had been at the table for a year. He said he would be optimistic and say they could but he was not sure that any agreement could be made. They would still oppose the bill and the bill would have to be amended. There simply is not time for that process.

SUBSTITUTE MOTION

Senator Hammond moved that H164aa be sent to the floor with a do pass recommendation. **Senator Darrington** seconded the motion.

Senator LeFavour requested a roll call vote.

AYES – Senators Bock, McGee, Darrington, Coiner and Hammond

NAYS – Senators LeFavour, Smyser, Chairman Lodge, and Vice Chair Broadsword

The Substitute Motion carried 5 - 4

Senator Darrington will sponsor the legislation.

H261

Relating to Occupational Therapy

John Watts, Lobbyist, on behalf of the Idaho Occupational Therapy Association, stated this legislation amends *Chapter 37 Title 54, Idaho Code*, the current occupational therapists licensure act. The amendment updates and includes terms and language to update the act and align Idaho's licensure requirements with the national model practice act, moves testing and licensing responsibility to the bureau of self-governing agencies, establishes and defines occupational therapy aide, delineates the practice of occupational therapy, establishes continuing education requirements, creates a temporary license subject to acceptance of qualifications and licensure issuance by the board, establishes new licensure dates and adds a disciplinary action section.

There is no impact to the General Fund. Licensure fees would need to be established by board rule in order to be included in the Bureau's dedicated fund.

Chairman Lodge asked if the Idaho State University is involved in this, then obviously it is sanctioned by the Idaho State Department of Education and the United States Department of Education, correct? **Mr. Watts** replied he could not say they had discussions with the United States Department of Education. However, they did present this information to the Idaho School Boards Association and the Idaho Superintendents Association. Phil Homer, Idaho Association of School Administrators, and Ms. Echeverria, Executive Director, Idaho School Boards Association, both reviewed the draft legislation early on in the session. Chairman Lodge stated they are more for K-12, aren't they? **Mr. Watts** replied yes in terms of a practitioner's point of view, however, in

terms of a curriculum point of view a great deal of time was spent with Dr. Eakman, PhD, OTR/L, Director of Occupational Therapy, and Dr. Erfer, PhD, PT, Chairman of the Department of Physical and Occupational Therapy, at Idaho State University, which everyone turns to for the curriculum and requirements you must have in order to be trained at a level that takes the examination at graduation and goes on to work.

Chairman Lodge stated what she was getting to is the National Board for certification for Occupational Therapy. The concern is to not get into the same situation as other Boards that have been discussed. To make certain that the certification is from a school that accredited and sanctioned by the United States Department of Education and the Idaho Department of Education. **Mr. Watts** replied the Accreditation Council of Occupational Therapy (ACOT) which sets the curriculum requirements for all colleges is the standard in the United States. Everyone must be ACOT certified, that is the standard.

Farrell Lindley, President, Idaho Occupational Therapy Association, addressed the committee and provided a brief history and description of Occupational Therapy.

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 Darrington moved that H261 be sent to the floor with a do pass recommendation. **Senator Smyser** seconded the motion. **The motion carried by Voice Vote.** **Senator Darrington** will sponsor the legislation.

ADJOURNMENT

Chairman Lodge thanked the committee and all in attendance. The meeting was adjourned at 5:07 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

- DATE:** April 2, 2009
- TIME:** 3:00 p.m.
- PLACE:** Room 117
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, LeFavour, and Bock
- MEMBERS ABSENT/ EXCUSED:** NONE
- 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.
- MINUTES:** **Chairman Lodge** called the meeting to order and welcomed guests and participants.
- Vice Chair Broadsword** moved to approve the minutes of March 30, 2009. **Senator Darrington** seconded the motion. **The motion carried by voice vote.**
- PRESENTATION** **Kelly Buckland**, Director, State Independent Living Council (SILC), Idaho, greeted and thanked the Committee for the opportunity to provide a brief history of SILC and the success of the "Medicaid for Worker's with Disabilities" program.
- Mr. Buckland** introduced **Rachel Johnstone**, Project Director, Medicaid Infrastructure Employment Empowerment Project. **Ms. Johnstone** briefed the Committee on the Medicaid Infrastructure Grant. The Medicaid Infrastructure Project provides outreach and education about the state Medicaid Buy-in program (MBI) - Medicaid for Workers with Disabilities.
- Chairman Lodge** and committee members congratulated Mr. Buckland on his new position as Executive Director of the National Council on Independent Living. Mr. Buckland will be lobbying Congress in Washington D.C.
- Mr. Buckland** said it has been an honor and a pleasure to work with Senators and the Idaho Legislature. In regard to disability policy there are a lot of things Idaho can be proud of including the Medicaid for Workers with Disabilities program. He thanked the committee for the opportunity to work with them and thanked the committee for the well wishes.

Chairman Lodge thanked Mr. Buckland and Ms. Johnstone for the presentation and for attending the meeting.

H260

Relating to the Idaho Skilled Nursing Facility

Kris Ellis, representing the Idaho Health Care Association, stated the purpose of this legislation is to establish a nursing home provider assessment. This assessment will be used to further leverage the federal Medicaid dollars. The moneys generated from the assessment shall be used primarily to increase payments to nursing homes to offset cuts in reimbursement to nursing homes as a result of H123 which reduced skilled nursing home rates, effective July 1, 2009.

H260 will give nursing homes the ability to recoup some costs and allow continued care to patients in these care settings.

Vice Chairman Broadsword questioned if the 2% cap was a negotiated amount. **Ms. Ellis** responded the industry as a whole has been reluctant because tax dollars are being used to get tax dollars back. To fill the \$8.2 million dollar gap which is about 1.7% of the gross revenues it was prudent to recommend 2% to allow for some flexibility.

Senator Darrington commented after the stimulus money moves into medicaid, the Department will be reimbursed at 76-79% match rather than a two-thirds match, then asked if that was correct? **Ms. Ellis** replied, "That's correct." **Senator Darrington** asked if this was available to any nursing home that wanted to opt in, correct? **Ms. Ellis** replied no, all nursing homes shall participate.

Senator Hammond asked why would a facility not want to opt in? **Ms. Ellis** replied in Idaho there aren't any facilities that wouldn't. There are some winners and some losers based on the mix of private pay versus medicaid pay. Facilities pay in on all patients but are only reimbursed for medicaid patients. Some facilities have a higher proportion of private pay patients.

Rick Holloway, President of Western Health Care Co., and owner of two nursing facilities, operator of five facilities in Idaho, testified and provided written testimony in support of this legislation. **Senator Darrington** commented the facility is going to pay 2% of the total aggregate, net medicare patient services revenue, of assessed facilities for the prior fiscal year. If the facility has 24 beds and there are vacancies it could be disproportionate on either the medicaid or private pay side. Does that determine how the facility holds the beds until they are filled with the right kind of patient in order to make this work? **Mr. Holloway** responded the way the Idaho Medicaid system works is because of rapid turn over in terms of eligibility, and because reimbursement is based on costs, in many situations the medicaid patient returns as good of a profit margin as most private pay patients.

Vice Chairman Broadsword asked if Mr. Holloway viewed this as a permanent change? **Mr. Holloway** replied the preference was that it is temporary. In conversations with the Department, no indication was made that this was temporary due to the unknown of how or when the medicaid budget and state resources recover. **Senator Darrington** added the unknown factor is going to be three, four, or five years down the road after the stimulus money is gone and whether the federal government through centers for medicare and medicaid (CMS) make the decision to increase the match that is closer to the stimulus match as compared to what our match is today. That is when the impact really kicks in. We all know there is a limit to how far the federal government is able to go. **Mr. Holloway** agreed with Senator Darrington. Mr. Holloway said they are very fortunate in the state of Idaho in that they have a direct line of communication with the state medicaid program. They take calls and they communicate with the providers. In other states this is not the case. Anything that happens with regards to medicaid funding or nursing facility reimbursement is not done in a vacuum, it is done with full cooperation and buyin from the providers as well as the Department.

Chairman Lodge suggested to Mr. Holloway that sometime when he is talking to the medicaid division he may want to tell them what he just told the committee. She said she knew the Medicaid Department didn't receive very many compliments. **Mr. Holloway** assured Chairman Lodge that they have expressed their sincere appreciation for their willingness to serve as our state agency. There is great communication in the state of Idaho and they are very fortunate.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachments 1, 2, 3).

MOTION

Senator Bock moved to send H260 to the floor with a do pass recommendation. **Senator Smyser** seconded the motion. **The motion carried by voice vote.** **Senator Bock** will sponsor the legislation.

ADJOURNED

Chairman Lodge adjourned the meeting at 4:13 P.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant

MINUTES

SENATE HEALTH & WELFARE COMMITTEE

DATE: April 16, 2009

TIME: 8:30 a.m.

PLACE: Room 117

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Hammond, Smyser, and Bock

MEMBERS ABSENT/ EXCUSED: Senator LeFavour

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.

MINUTES: **Chairman Lodge** called the meeting to order and welcomed guests and participants.

H306 Relating to Pharmacists

Toni Lawson, Vice President, Idaho Hospital Association, Inc., stated the purpose of this legislation is to provide for the authorization and regulation in Idaho of institutional telepharmacy services in or to provide pharmaceutical care to patients being treated in Idaho. This proposal defines the "practice of telepharmacy across state lines," restricts that concept to institutions and pharmacists outside Idaho providing services to patients within this state, and requires any such institutional rug outlets and its employees engaged in telepharmacy into Idaho to be registered. The cost of inspection and registration will be borne by the applicants and the process will be defined by Board of Pharmacy rules with successful applicants bound by Board disciplinary and other specific rules as the Board of Pharmacy will determine.

The Board of Pharmacy was planning to address telepharmacy within the next two to three years, but some issues have arisen recently that require addressing the telepharmacy issue sooner. A number of accrediting and federal regulatory agencies have instituted new regulations regarding "first order review" which could result in a noncompliance for hospitals in Idaho, especially in Idaho's small rural hospitals where pharmacist shortages are most challenging.

This legislation will provide Idaho hospitals with additional options to provide appropriate care to their patients. Some Idaho hospitals are a part of systems based in other states and since their pharmacists are not

licensed in Idaho, they cannot complete first order review from another system facility, taking away important cost saving measures and maximizing the appropriate use of hospital pharmacists.

There will be no fiscal impact to the state general fund.

Senator Hammond questioned what medical records, other than the actual prescription, would the pharmacist use for review? **Ms. Lawson** provided as an example the Cassia Regional Medical Center located in Burley, Idaho.

The Cassia Regional Medical Center is part of the Intermountain Healthcare system of hospitals and clinics based in Salt Lake City. As part of the system, the same electronic medical records are available within the entire state. Under this scenario, the pharmacist will have access to the electronic records regardless of location allowing for an appropriate review.

Senator Hammond commented that the pharmacist will be able to see all of the other medications the patient is receiving. **Ms. Lawson** answered yes and this is precisely the purpose for this type of review.

Senator Bock asked Ms. Lawson to provide examples of how telepharmacy will work. **Ms. Lawson** iterated the example given to Senator Hammond as well as when a pharmacist is not available after hours. Another example is if a hospital is short staffed or has an increase in patient volume that the on call pharmacist cannot handle alone. Senator Bock asked if this was a federal framework that has been established to make this possible or is this part of some interstate compact? **Ms. Lawson** replied it is a combination of both. The language in the legislation was derived from the model language used by the National Boards of Pharmacy and has been appropriately adapted to Idaho's needs. Many states use this model language as it provides continuity and standards. Compacts between states are left up to individual states to determine whether or not they will have reciprocal agreements.

Senator Coiner asked if surrounding states have this in place or are they heading in this direction? **Ms. Lawson** replied there are a number of states that have moved in this direction. **Senator Coiner** queried what is the business model used and asked if this would end up as a pharmaceutical clearing house somewhere in Omaha that would contract these services with hospitals and clinics throughout the states? **Ms. Lawson** replied there could be a variety of models. The models that hospitals in Idaho are reviewing are not clearing houses of pharmacy. One of the things that would keep us from that sort of model is the limited scope of what can happen through telepharmacy. There are still other duties that a pharmacist has in a hospital that cannot be completed through telepharmacy. For example, direct counseling of patients, counseling of staff, mixing and labeling of drugs and a variety of things that still need to take place on site. It is hard to foresee that the in-house pharmacy would disappear. This aspect is being closely monitored and

will be addressed in the rules of the Board. The Board wants the flexibility so if it moves in that direction it can be addressed. A pharmaceutical warehouse is not the intent of the Associations' hospitals. There would be other technical challenges such as getting systems in place that cross state lines that make this less attractive than it seems. However, that is in the mind of the Board and that is why specific language has been added to the legislation.

Senator Coiner asked what kind of model would be followed? Is the Cassia hospital going to contract with Salt Lake? **Representative Wood** replied the limiting factor is going to be the electronic medical record. First order review is a patient safety issue. The number one issue that will have to be known are allergies and incompatibilities to drugs. Because of the Health Insurance Portability and Accountability Act (HIPAA) the systems electronic medical records aren't going anywhere else. Electronic medical records will not be contracted out. The Intermountain or St. Lukes system would have to be accessed for those medical records to even have the ability to perform a first order review. The whole system will be limited by the electronic medical record and the privacy issues associated with all medical records. Contracting outside of the system will not be done. This legislation provides a tool that outlying hospitals of a system, like a rural or small critical access hospital in Idaho, would most likely contract with the only system in the state which is Saint Lukes or a larger institution within the state. This is self limiting, the system and HIPAA will prevent a pharmaceutical warehouse approach.

Vice Chairman Broadword remarked that no where in the legislation did it state the telepharmacy policy will only be used for first order review. She then asked, "Will this be in rule?" **Ms. Lawson** responded there are three or four sections within the legislation that state "as defined by rules of the Board." **Senator Bock** commented this would be the last question of the session and went on to ask if the product would be in the state or would the product be in a different location? **Ms. Lawson** answered that she could not think of any instance where that would be part of the picture.

MOTION

Senator Hammond moved to send H306 to the floor with a do pass recommendation. **Senator Smyser** seconded the motion. **The motion carried by voice vote.** **Chairman Lodge** will sponsor the legislation.

Chairman Lodge thanked participants for joining this sessions last Health and Welfare Committee meeting. She then thanked **Kaytlin Schrader**, Senate Page, District 13, for her service to the Health and Welfare committee. **Ms. Schrader** was presented with a gift and letters of recommendation from the Committee members. Chairman Lodge asked Ms. Schrader what her plans were for the following year. Ms. Schrader replied that she would be attending college. **Chairman Lodge** stated the best thing about **Ms. Schrader** was that she always greeted everyone with a smile and this was a great attribute.

Chairman Lodge thanked the Committee members for their participation in the Health and Welfare Committee during this legislative session. She stated the members have been remarkable in bearing with this years difficult issues and decisions. Chairman Lodge said she looked forward to working with them next session.

Senator Hammond on behalf of the Committee thanked Chairman Lodge for her leadership and strength as Chairman.

Chairman Lodge thanked the committee secretaries, Joann Hunt and Joy Dombrowski, for their hard work. She complimented the superb minutes that were on time and very well done and for keeping her organized and on time. Joy and Joann have been a pleasure to work with.

ADJOURNED

Chairman Lodge adjourned the meeting at 9:05 A.M.

Senator Patti Anne Lodge
Chairman

Joy Dombrowski
Secretary

Joann P Hunt
Legislative Assistant