

# Senate Health & Welfare Committee

Minutes  
2010



## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 18, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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 at 3:07 p.m. She thanked everyone for coming, introduced legislative support staff, reviewed the contents of the Committee folders, acknowledged the presence of Dennis Stevenson of Legislative Services, and passed the gavel to **Vice Chairman Broadsword** to begin presentation of rules review for the Department of Health and Welfare.

**RULES:**

**Vice Chairman Broadsword** advised that due to a scheduling conflict Dr. Murry Sturkie would be unavailable to present Docket 16-0202-0902 and that docket will be moved to a later date for review.

**16-0203-0901** Relating to Rules Governing Emergency Medical Services (Temporary). **Wayne Denny**, Program Manager of the Standards and Compliance Section of the Emergency Medical Services Bureau of the Division of Public Health, advised that most of the terminology concepts and practices in Title 56 which is otherwise known as the Emergency Medical Services (EMS) Act have existed largely unchanged since the 1970s when the law was first enacted. **SB1108a** as passed in the last Legislative Session changed much of the language in Title 56 to reflect contemporary EMS trends and standards. The substance of Docket 16-0203-0901 is the same as the previous rule with terminology adjustments made to bring the rule into alignment with **SB1108a**. He stated that this is a temporary solution to help assure that the emergency medical services agencies and personnel in Idaho continue to have a coherent regulatory structure under which to operate until the negotiated rulemaking product that is currently being drafted is complete and ready for Committee review during the 2011 Legislative Session.

**Mr. Denny** reviewed the changes in Docket 16-0203-0901, noting in

particular:

1. Language describing the requirement for the criminal history background check was added to align the structure of the Health and Welfare rules with the rules governing criminal history background checks of other agencies who also reference criminal history;
2. Definitions of air medical service and air ambulance service were added. The previous rule did not differentiate between these two services; and
3. A requirement was added for applicant Nontransport EMS services to submit EMS response data to the EMS Bureau.

**Mr. Denny** requested the Committee approve this Docket as presented.

**Senator Hammond** requested that Mr. Denny define what services would be included in Nontransport services. **Mr. Denny** advised that a Nontransport service is generally the agency arriving at a 911 scene first. They provide patient care and prepare the patient for ambulance service. This is typically a fire based service.

In response to questions from **Senators Hammond** and **Smyser**, **Mr. Denny** advised that there are no unresolved issues with constituents regarding this rule. He stated that because these changes involved mostly vocabulary changes, negotiated rulemaking was not conducted. However, a notice of hearing was published and no one appeared. He further advised that prior to presenting this rule he consulted with the statewide EMS Advisory Committee and attended a few local and regional EMS organization meetings where he met no resistance. **Mr. Denny** indicated that negotiated rulemaking is ongoing related to those issues in Title 56 that were controversial last year, that there is representation from all constituent groups at the table, and he anticipates bringing those changes to the Committee in 2011.

**Senator Broadsword** pointed out that there is an indication that negotiated rulemaking was conducted regarding this rule and questioned whether that actually occurred. She asked **Dennis Stevenson**, Legislative Services, to interpret this for the Committee. **Mr. Stevenson** reviewed the Docket and advised that there is a difference between a public hearing and a negotiated meeting. Here a negotiated rulemaking meeting was advertised and no one attended, therefore, the Docket is technically correct.

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 LeFavour** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0203-0901. The motion carried by **voice vote**.

**16-0210-0901**

Relating to Idaho Reportable Diseases (Pending).

**Kathy Turner**, Program Manager, Office of Epidemiology, Food

Protection, and Immunization, Department of Health & Welfare presented testimony on Docket 16-0210-0901. She advised that this Docket includes two new sections clarifying language for specific diseases as well as a correction to the 2008 chapter rewrite. The first new section, Section 522, is currently a temporary rule which Idaho has benefitted from as laboratory-confirmed and hospitalized cases of H1N1 are being tracked to monitor the effect of the pandemic and will be used if future novel viruses emerge. The rule provides public health with the authority to investigate cases without mandating investigation of every reported infection by the Public Health Districts. The second new section, Section 068, is designed to prevent the spread of health hazards from dead human bodies. Specifically, this rule gives the Division of Public Health Administrator or Public Health District Director authority to require or prevent disposition methods and other practices needed to prevent the spread of infectious or communicable diseases or hazardous substances. Additionally, the rule requires anyone authorized to release a dead human body with certain infectious diseases to notify the person taking possession of the body and indicate necessary precautions on a written notice accompanying the body. **Ms. Turner** advised that the Board of Morticians has been advised of this rule change and no comments have been received.

**Ms. Turner** advised that the rule further changes the section on rabies reporting to require cases of rabies in animals be investigated to determine who should be offered protective rabies vaccination. Day cares were removed from the entities required to report restrictable diseases and conditions as they were erroneously included during the 2008 chapter rewrite. Clarifications were made regarding the nomenclature for the agent causing Cryptosporidiosis and complications of *E. Coli* infection and reducing the time a person must stay home with mumps from 9 to 5 days in accordance with current recommendations. Clarifications were also made to the reporting requirements for Creutzfeldt-Jakob Disease (CJD) and West Nile virus.

**Ms. Turner** requested the Committee approve Docket 16-0210-0901 as presented.

**Senator LeFavour** inquired whether this is the first time a regulation regarding embalming has been included in the rules. **Ms. Turner** advised that there are some regulations in Vital Statistics rules and Morticians and Funeral Director's rules that require embalming and set forth who can handle disposition of a dead human body, but this is the first instance in these rules where embalming may be required, that the circumstances are limited.

**Vice Chairman Broadsword** noted that CJD is already included in the rule and asked if that is not already a reportable event. **Ms. Turner** explained that the rule now requires this be reported to Public Health in Idaho and the proposed rule will additionally require written notification to anyone transporting a dead human body suspected of or confirmed as having CJD. These are two separate notification processes.

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 Hammond** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0210-0901. The motion carried by **voice vote**.

**16-0212-0901**

Relating to Procedures and Testing to be Performed on Newborn Infants (Pending).

**Mitch Scoggins**, Coordinator for the Children's Special Health Program in the Bureau of Clinical and Preventative Services in the Division of Public Health presented Docket 16-0212-0901. He advised that the Idaho Newborn Screening Program diagnoses about 30 infants per year as having one of the over 40 conditions on the screening panel. Early detection and treatment of affected infants allows most of them to live their lives symptom-free. The Newborn Screening Rule is being opened this year primarily to update the incorporation by reference to the latest edition of the manual of the Clinical Laboratory Standards Institute. A new section, entitled "Use and Storage of Dried Blood Specimens" has been added to clearly define that the only acceptable use of an infant's dried blood specimen is for newborn screening, and that specimens will not be retained for longer than 18 months.

**Mr. Scoggins** requested the Committee approve Docket 16-0212-0901 as presented.

**Senator Darrington** inquired whether the 18 month period for retaining specimens is the floor as well as the ceiling. **Mr. Scoggins** stated that currently specimens are retained for 12 months, and this rewrite will allow a little extra room to avoid a breach of the Rule in the event the disposal is delayed for a short time.

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, seconded by **Senator Darrington**, that the Committee adopt Docket 16-0212-0901. The motion carried by **voice vote**.

**16-0225-0901**

Relating to Fees Charged by the State Laboratory (Pending Fee).

**16-0225-0902**

**Dr. Christopher Ball**, Acting Chief of the Bureau of Laboratories, Idaho State Public Health Laboratory (State Lab) advised that an audit of the existing rule found that definitions, tests, and fees in this rule are outdated and need to be updated to reflect current practice and more fully cover the actual cost of laboratory tests. In response to the audit, the current chapter is being repealed under Docket 16-0225-0901 and rewritten under Docket 16-0225-0902.

**Dr. Ball** advised that Docket 16-0225-0902 is a proposed rewrite that eliminates the services that are no longer performed by the State Lab,

adds the standard sections required by the Office of Administrative Rules, updates chapter definitions, updates the list of laboratory tests offered by the State Lab and their respective fees, as well as reorganizes the chapter and revises the language to reflect the Department of Health and Welfare's plain language standards. The fees for the laboratory tests performed by the State Lab are being increased. **Dr. Ball** estimated this increase in fees will result in about \$130,000 of additional receipt funding. By implementing this new fee structure, it will not be necessary to seek additional General Funds in order to maintain the ability to provide the services needed to support Idaho's Public Health programs and response efforts.

**Dr. Ball** requested the Committee approve Docket 16-0225-0901 and Docket 16-0225-0902 as presented.

**Senator Darrington** stated that he assumed the State Lab does not do any criminal or genetic testing and asked if the DNA capacity of the State Lab is for establishing paternity. **Dr. Ball** advised that the State Lab has the ability to do several DNA sequence based technologies, but none of those are for determining paternity. Paternity testing is done by the forensics lab associated with the Idaho State Police. **Senator Darrington** further noted that he did not find a section in the fee schedule on testing for genetic markers and thought that had been a major activity at the State Lab historically. **Dr. Ball** responded that cytogenetic testing services have been moved out of the State Lab and are now contracted with a private provider, and genetic counseling has been assigned to another bureau within the Health and Welfare Department.

**Senator McGee** noted that **Dr. Ball** indicated in testimony that no one had offered testimony against the proposed fee increases and asked **Dr. Ball** to confirm that. **Dr. Ball** confirmed his statement – no public comments were filed. **Senator McGee** commented that with no opposition to this change in this economic climate, the Committee should act in accordance with the request.

**Vice Chairman Broadsword** noted that by putting the fees in code the State Lab would have to come back to the Legislature each time an adjustment was in order. She inquired whether it would be better to have the fee schedule as an administrative rule and allow the Department flexibility? **Dr. Ball** indicated that in his personal opinion listing the services and fees in code provides the public with knowledge of what their State Lab is capable of and clearly demonstrates to potential clients what fees they can expect to see. In terms of providing service, which is the focus of the State Lab, it provides a nice comprehensive way to describe the services provided by the State.

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, seconded by **Senator Darrington**, that the Committee adopt Docket 16-0225-0901 and Docket 16-0225-0902. The

motion carried by **voice vote**.

**16-0506-0901**

Relating to Criminal History and Background Checks (Pending Fee).

Steve Bellomy, Bureau Chief of Audits and Investigations, Department of Health and Welfare, representing the Criminal History Unit, advised that the purpose of the Criminal History Unit is to provide for an efficient method to conduct criminal background checks on people who seek employment working with children and vulnerable adults. Docket 16-0506-0901 adds services for which a criminal history background check is required, adds volunteers to the list of Department employees requiring a background check, adds three new felonies to the list of disqualifying crimes, and removes cross references to specific paragraphs, eliminating the need to amend the Criminal History rules when there is a paragraph change in another rule.

**Mr. Bellomy** reviewed the changes and requested the Committee approve Docket 16-0506-0901 as presented.

**Senator Broadsword** noted an age limit discrepancy for background checking between Sections 12 (Idaho Child Care Program) and Section 15 (Licensed Day Care) and asked Mr. Bellomy to explain why one rule states an age limit of 13 years and the other an age limit of 12 years. **Mr. Bellomy** advised that the individual programs each set their rules. **Senator Broadsword** advised that consistency within the Department would be advisable.

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, seconded by **Senator LeFavour**, that the Committee adopt Docket 16-0506-0901. The motion carried by **voice vote**.

**16-0301-0901**

Relating to Eligibility of Health Care Assistance for Families (Pending).

**Kathy McGill**, Program Specialist, Department of Health and Welfare, Division of Welfare, advised the changes in Docket 16-0301-0901 are being initiated due to changes in Federal regulations, and will align Idaho's Health Care for Families and Children rules with the new Federal Regulations. She outlined the changes as:

- (1) Extend the Afghani special immigrant benefits to eight months.
- (2) Amend deemed newborn (a newborn child deemed eligible for Medicaid for the first year of his life) to remain eligible regardless of mother's eligibility or whether living with birth mother.
- (3) Align citizenship and identification documentation requirements with federal regulations for deemed newborns and tribal members.
- (4) Exclude income as required and defined in federal law.
- (5) Delete the reporting requirements and income test from transitional Medicaid.

**Ms. McGill** reviewed details of the changes and requested that the

Committee approve Docket 16-0301-0901 as presented.

**Senator Broadsword** asked **Ms. McGill** to address the fiscal impact of this change, in particular the percentage of impact to the general fund and whether that results from extending benefits for a full year with no proof of income. Ms. McGill responded that the impact to the general fund was calculated at \$68,900 annually based on looking at the number of families whose transitional medicaid ended during the 12 month period due to not providing the requested report, and that the remaining fiscal impact is driven by federal legislation.

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 Darrington** moved, seconded by **Senator Lodge**, that the Committee adopt Docket 16-0301-0901. The motion carried by **voice vote**.

**16-0306-0901**

Relating to Refugee Medical Assistance (Pending).

**Ms. McGill** presented Docket 16-0306-0901, explaining that the Idaho Refugee Medical Assistance program provides time limited medical coverage to certain special immigrants (Iraqi and Afghani nationals who worked with the U.S. Armed Forces as translators, and their families). This program is 100% federally funded. She stated that the Afghani special immigrant benefits need to be extended from six months to eight months to bring them into alignment with recent changes in federal law.

**Ms. McGill** requested that the Committee approve Docket 16-0306-0901 as presented.

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 Coiner** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0306-0901. The motion carried by **voice vote**.

**16-0308-0901**

**Genie Sue Weppner**, Program Manager, Division of Welfare, Department of Health and Welfare, presented Docket 16-0308-0901. She advised that this rule is similar to Docket 16-0306-0901 only it affects the Temporary Assistance for Families in Idaho Program (TAFI). Afghani special immigrant benefits under TAFI need to be extended from six months to eight months to bring them into alignment with recent changes in federal law.

**Ms. Weppner** requested that the Committee approve Docket 16-0308-0901 as presented.

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, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0308-0901. The motion carried by **voice vote**.

**16-0410-0902**

Relating to Community Services Block Grant Program (Pending).

**Ms. Weppner** presented Docket 16-0410-0902. She advised the Community Services Block Grant Program (CSBG) is a federal grant that is administered by the Department of Health and Welfare. Its funds are managed under contracts with local Community Action Agencies. Block grant funds are used for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient. Since federal statute allows states to set some of the parameters of income eligibility for CSBG, the Department is changing the rule to exclude child support income from being counted when determining program eligibility. This change will align CSBG Program income eligibility with that of similar programs, reducing administrative overhead and errors, and allow better service for those most in need in our communities.

Ms. Weppner stated that this rulemaking also increases the income limit for CSBG eligibility from 125% to 200% of the federal poverty guidelines, as provided under the American Recovery and Reinvestment Act of 2009 (ARRA). This increase in the income limit will allow the program to reach many more Idaho families with help urgently needed in this recession.

**Ms. Weppner** requested that the Committee approve Docket 16-0414-0902 as presented.

**Senator Broadsword** asked if there would be a need to reduce the income limit eligibility when ARRA funds disappear. **Ms. Weppner** advised that ARRA funds coming to the CSBG were almost five million to be spent in the next two years. It is her belief that the intent in raising eligibility level was to be able to use those funds to serve families that may have some income but are in desperate situations. She stated that it is highly possible that income limit eligibility levels may need to be reduced if the ARRA funds are reduced.

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 LeFavour** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0410-0902. The motion carried by **voice vote**.

**16-0414-0901**

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

**Ms. Weppner** presented Docket 16-0414-0901. She advised that LIHEAP provides federal subsidies to assist low-income families with their energy

needs during the winter months. The proposed changes to LIHAP will help more families who are struggling during these difficult economic times through much needed heating assistance. In the last two years LIHEAP has received approximately 54% more funding than in the past. This rule changes the income eligibility for LIHEAP to 60% of Idaho's State Median Income and excludes child support income as countable income, aligning the LIHEAP program with the CBSG program and the U.S. Department of Energy's Weatherization Assistance Program.

**Ms. Weppner** requested that the Committee approve Docket 16-0414-0901 as presented.

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

**MOTION**

**Senator Coiner** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0414-0901. The motion carried by **voice vote**.

**16-0416-0901**

Relating to Weatherization Assistance Program in Idaho (Pending).

**Ms. Weppner** presented Docket 16-0416-0901. She advised that the Weatherization Assistance Program enables low-income families to permanently reduce their energy bills by making their home more energy efficient. Over the next two years Idaho will receive 30.3 million in funds as a result of ARRA. This rule will change income eligibility criteria for weatherization assistance through this program from 125% to 200% of the federal poverty level. As a result, more families in Idaho will benefit from a permanent reduction in their energy costs.

**Ms. Weppner** requested that the Committee approve Docket 16-0416-0901 as presented.

**Senator Hammond** noted that this program includes rental units and asked how many rental units have received assistance versus single family residences. **Ms. Weppner** stated that she has no current knowledge of that ratio, however, a report detailing that information is available and she will provide that to the Committee. **Senator Hammond** stated that his interest is in making sure that the savings is going directly to the low-income family unit and not a landlord. **Ms. Weppner** stated that the rental units involved in this program are generally those types of units that someone with higher income would not choose and she feels the improvement of energy efficiency actually does reach the low-income family.

**Senator Broadsword** remarked that ultimately it would be person who paid the utility bill who receives the benefit and that would most likely be the renter rather than the rental unit owner.

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

Attachment 11).

**MOTION**

**Senator McGee** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0416-0901. The motion carried by **voice vote**.

**ADJOURNMENT**

**Vice Chairman Broadsword** concluded the rules review and returned the gavel to **Chairman Lodge**. There being no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 4:11 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 19, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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 at 3:05 p.m., welcomed guests, and passed the gavel to **Vice Chairman Broadsword** to proceed with rules review for the Department of Health and Welfare.

**RULES:**

**16-0309-0804** Relating to Medicaid Basic Plan Benefits (Pending).

**Paul Leary**, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, presented Docket 16-0309-0804. **Mr. Leary** stated that this rule is required to meet new federal regulations that require handwritten or computer printed medicaid prescriptions be on tamper proof pads that meet certain federal regulations. Prescriptions for medicaid patients that are telephoned, faxed or e-Prescribed are exempt from these tamper resistant requirements.

**Mr. Leary** requested that the Committee approve this Docket as presented.

**Senator McGee** inquired whether these tamper proof pads contain water marks or some other identification that those filling prescriptions would understand and know to be legitimate? **Mr. Leary** responded that he was correct and that this requirement already exists in Idaho for scheduled narcotics.

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, seconded by **Senator McGee**, that the Committee adopt Docket 16-0309-0804. The motion carried by **voice**

**vote.**

**16-0309-0904**

Relating to Medicaid Basic Plan Benefits (Pending).

**Mr. Leary** presented Docket 16-0309-0904. He stated that the rules in this docket pertain to the Preventive Health Assistance (PHA) benefit available to children on Idaho's Children Health Insurance Program (CHIP) who are required to pay a premium. Currently these children are limited to a total of 200 points when the child participates in both the Behavioral PHA and Wellness PHA at the same time. Each point is equivalent to \$1 and those funds can be used to offset premium payments. This cap is less than the cap for a child who does not participate in both types of PHA concurrently. **Mr. Leary** advised that the Department is removing the more restrictive cap to allow a participant to earn the maximum number of points for both PHA types.

**Mr. Leary** stated that other changes are being made to this rule to limit wellness points to be used to offset premiums to align with approved State Plan; align pharmacy provider qualifications with other pharmacy providers; remove references to vouchers; and add references for prior authorizations for PHA services and products with Medicaid's new automated system. **Mr. Leary** advised that the fiscal impact of this rule change would be minimal.

**Mr. Leary** requested the Committee approve this docket as presented.

**Senator Bock** requested that **Mr. Leary** give an overview of the PHA program. **Mr. Leary** advised that this program was implemented as part of Medicaid reform in 2006. There are two arms, Wellness and Behavior. The Wellness program is only applicable to those children on our CHIP program who must pay a premium. If parents of those children who fall between 133% and 150% of the federal poverty guidelines keep their child's wellness exams and immunizations up to date, they earn 10 points per month which offsets their total premiums; those between 150% and 185% of the federal poverty guidelines can offset all but \$5 of premiums with these points. The Behavior program allows points for healthy behavior changes, i.e., those who are under or overweight who implement weight management programs to meet certain body mass index levels, or perhaps a teenager who starts smoking and wants to quit. The program assists with devices and medications to assist with those behavioral changes.

**Vice Chairman Broadsword** asked whether there are adequate funds in the program to cover the increased points limit and asked that **Mr. Leary** provide a dollar figure for fiscal impact. **Mr. Leary** indicated that there are currently 32 children in the program and with the additional 120 points that could be earned under the rule change, he would estimate a fiscal impact of no more than \$1,000. He further stated that if the overweight use the program successfully the Department would probably save three times that much.

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, seconded by **Senator Bock**, that the Committee adopt Docket 16-0309-0904. The motion carried by **voice vote**.

**16-0310-0902**

Relating to Medicaid Enhanced Plan Benefits (Temporary).

**Mr. Leary** presented Docket 16-0310-0902. He stated that these rules were approved as temporary rules by the 2009 Legislature as part of the State Fiscal Year 2009 - 2010 budget holdback and relate to the reduction in service limits to 22 hours for Medicaid covered Developmental Disability services. **Mr. Leary** noted that the economic environment that precipitated the need for this service limitation has not changed and the Department continues to monitor the impact of this service reduction to prevent adverse outcomes to Medicaid participants. In response to public comment the Department has initiated the Children's System Redesign, a jointly sponsored effort between Medicaid and Family and Community Services which includes parents, other family members, advocates, providers, and the Department of Education. The Department's goal is to bring a comprehensive set of rules that address this subject at the 2011 Legislative Session.

**Mr. Leary** requested the Committee extend the temporary rules in Docket 16-0310-0902 to allow the Department to continue to work on more permanent changes.

**Senator LeFavour** asked if this rule change is essentially the same as the Committee approved last year. **Mr. Leary** responded that is correct. **Senator LeFavour** noted that she has an appreciation for the efforts being undertaken to look at the consequences of this rule and better design the program. She inquired whether there are plans in place for exceptions to the limits of the rule. **Mr. Leary** advised that children have access to the early periodic screening diagnosis program and monitoring of the program over the past year shows the Department received 164 requests for additional services. Of those requests, based on clinical needs assessment, 62 received the full amount requested, 38 received partial requests, 48 were denied additional services, and 16 requests were incomplete. **Senator LeFavour** noted further that she is concerned that the array of services may not be sufficient. **Vice Chairman Broadsword** directed **Senator LeFavour's** attention to the extensive list of services contained in the rule on pages 51 through 53. **Mr. Leary** advised that the intent of the Redesign team is to look at the array of services and focus on a balance between services and natural supports and create a system of care approach that recognizes the importance of families, providers, schools and the community.

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, seconded by **Senator Smyser**, that the Committee adopt Docket 16-0310-0902. **Vice Chairman Broadsword**

reminded the Committee that this is a Temporary Rule that will be back before the Committee next Session. The motion carried by **voice vote**, with **Senators LeFavour** and **Bock** voting Nay.

**16-0309-0901**

Relating to Medicaid Basic Plan Benefits (Pending).

**Sheila Pugatach**, Principal Financial Specialist, Division of Medicaid, Department of Health and Welfare, presented Docket 16-0309-0901. She stated that Medicaid reimbursement for hospitals is based on a percentage of customary charges. This rule change reduces the current maximum and minimum reimbursement percentages from 96.5% maximum and 81.5% minimum to new percentages of 91.7% maximum and 77.4% minimum. These percentages reflect a 5% decrease in the hospital reimbursement percentages.

**Ms. Pugatach** requested the Committee approve this docket as presented.

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, seconded by **Senator McGee**, that the Committee adopt Docket 16-0309-0901. The motion carried by **voice vote**.

**16-0309-0902**

Relating to Medicaid Basic Plan Benefits (Pending).

**Ms. Pugatach** presented Docket 16-0309-0902. These rules are being amended in response to statutory changes made during the 2009 Legislative session under **HB 123**. **Ms. Pugatach** advised that all hospitals serving a disproportionate share (DSH) of low income patients must qualify in order to receive a DSH payment. The changes in this rule remove all references to DSH payments to out-of-state hospitals, and remove reference to the requirement that the obstetricians have to provide services to Medicaid participants during the year in order to receive DSH payment.

**Ms. Pugatach** requested the Committee approve this docket as presented.

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

**MOTION**

**Chairman Lodge** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0309-0902. The motion carried by **voice vote**.

**16-0310-0903**

Relating to Medicaid Enhanced Plan Benefits (Pending).

**Ms. Pugatach** presented Docket 16-0310-0903. These amendments are

in response to the passage of **HB 123** during the 2009 Legislative session. **Ms. Pugatach** advised that nursing facilities are reimbursed with a daily rate that is adjusted for inflation and increased/decreased costs on an annual basis. This rule changes the percentage calculation used for the incentive payment from 75% to 50%, and caps the incentive payment at \$9.50 per patient day. It also decreases the inflation indices add-on amounts 1% for cost limits and costs.

**Ms. Pugatach** requested the Committee approve this docket as presented.

**Senator Hammond** requested that **Ms. Pugatach** explain what an incentive payment is. **Ms. Pugatach** advised that when a nursing home keeps their indirect costs (those costs that are not for direct patient care) under a 50% threshold, they qualify to receive an incentive payment up to \$9.50 per patient day. **Senator LeFavour** inquired whether this incentive payment could in any way compromise the quality of patient care? **Ms. Pugatach** deferred that question to **Robert Vande Merwe**, representing the Idaho Health Care Association. **Mr. Vande Merwe** advised that in test work and provider assessment for the most part this did not affect patient care.

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 Hammomd** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0310-0903. The motion carried by **voice vote**.

**16-0310-0904**

Relating to Enhanced Plan Benefits (Pending).

**Ms. Pugatach** presented Docket 16-0310-0904. Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) are reimbursed with a daily rate that is adjusted for inflation and increased/decreased costs on an annual basis. **Ms. Pugatach** advised that this rule change will freeze the daily reimbursement rate so that ICFs/MR will be paid the same daily rate in Fiscal Year 2010 as in Fiscal Year 2009.

**Ms. Pugatach** requested the Committee approve this docket as presented.

**Vice Chairman Broadsword** inquired whether this is a result of the fluctuation in their costs that go up and down on an annual basis? **Ms. Pugatach** advised that this rulemaking is necessary to comply with **HB 123** passed during the 2009 Legislative session. **Senator LeFavour** noted that it was her understanding that we have created some laws to address a bad economic situation and asked if we would come back when the situation improves to readdress these changes. **Senator Broadsword** requested that **Leslie Clement**, Administrator, Division of Medicaid, address this question. **Ms. Clement** advised that there is a sunset clause in the statute and unless the sunset clause is extended,



which she indicated she would be asking the Committee consider yet this session, it will automatically expire. We then come back next year and request that limitation be removed.

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 Coiner** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0310-0904. The motion carried by **voice vote**.

**16-0309-0903**

Relating to Medicaid Basic Plan Benefits (Pending).

**David Simnitt**, Program Manager, Division of Medicaid, Department of Health and Welfare, presented Docket 16-0309-0903, applying to school-based services. **Mr. Simnitt** advised that the primary changes under this docket relate to a recent court decision which found that only the schools have the authority to limit who provides services on their campuses. Therefore, this rule removes the requirement that community Medicaid providers must have a contract in place with the school prior to delivering services in a school setting. Additional changes reflect alignment with professional licensure and certification requirements of the staff delivering Medicaid school-based services.

**Mr. Simnitt** requested the Committee approve this docket as presented.

**Vice Chairman Broadsword** recognized **Ms. Clement**, requesting that she provide the Committee further information regarding the court case behind this rule change. **Ms. Clement** stated that a lawsuit was brought by Co-Ad against the Department alleging that the Department was limiting individuals free choice of providers by telling private providers they had to contract with schools in order to provide services in the schools. The judge found their case compelling and ruled it is really up to the schools to make those decisions. She further stated that the Department of Education actually was fully in support of the rule as they were having some challenges with private providers coming to the schools and controlling that access. The result of the court case is that the school districts must manage this process. They can require that private providers contract with them in order to provide services in the schools, the Department just cannot do that.

**Senator Bock** inquired whether Co-Ad had any objection to this rule change? **Ms. Clement** advised that no comments were received to this rule change and the Department does not view these rules as controversial.

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 McGee** moved, seconded by **Senator Lodge**, that the Committee adopt Docket 16-0309-0903. The motion carried by **voice**

**vote.**

**16-0310-0906**

Relating to Medicaid Enhanced Plan Benefits (Pending).

**Mr. Simnitt** presented Docket 16-0310-0906 stating this rule change is also being made to comply with the recent court decision and is similar to changes being made to the Medicaid Basic Plan rule under companion Docket 16-0309-0903.

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 LeFavour** moved, seconded by **Senator Smyser**, that the Committee adopt Docket 16-0310-0906. The motion carried by **voice vote**.

**16-0313-0901**

**Mr. Simnitt** presented Docket 16-0313-0901 applying to consumer-directed services for participants on the developmental disabilities waiver. He noted the original proposed revisions to these rules received many written comments and testimony at public hearings about the negative impact proposed changes would have on participants accessing consumer-directed services under the aged & disabled waiver. **Mr. Simnitt** advised that the Department listened and those controversial changes are not included in the pending rule before the Committee. With approval of these rules, self-directed participants will be able to choose who provides their financial management services, negotiate a monthly payment rate, and change providers when they are not satisfied.

**Senator Bock** noted that it is not obvious what actually was taken out in response to input received and asked **Mr. Simnitt** to provide that information. **Mr. Simnitt** advised there were numerous changes that related to adults on the aged and disabled waiver and how they were required to secure financial management services. **Senator Bock** emphasized that he was trying to determine what the substance of the objections were. **Mr. Simnitt** deferred to **Mr. Leary** for an answer to the question. **Mr. Leary** advised that the Department looked at financial management services no matter what population they were in. We tried to have one set of rules that covered everyone and it became evident that we were not ready to do that. If we had continued with the original wording it would have been confusing with all the retracted material. **Vice Chairman Broadword** asked **Mr. Leary** if the rule now before the Committee has been before the public for comment and whether any comments were received? **Mr. Leary** responded that it had 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 10).

**MOTION**

**Senator Coiner** moved, seconded by **Senator Bock**, that the Committee adopt Docket 16-0313-0901. The motion carried by **voice vote**.

16-0322-0901

Relating to Residential Care or Assisted Living Facilities in Idaho (Pending).

**Randy May**, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, presented Docket 16-0322-0901. He advised that this rule change requires each resident (either Department funded or private pay) to be assessed by the facility to ensure they are appropriate for placement in the facility. The rules also contain a requirement that each facility enter into an admissions agreement which clearly spells out services to be provided, the rates the facility will charge for those services, and identify assessments the facility will use and who will conduct those assessments should the resident's need for services change. In addition, the facility's billing practices must be transparent and understandable to the client.

**Vice Chairman Broadsword** complimented **Mr. May** on the work the Department had undertaken during the last year to bring this item back before the committee with no opposition.

**Senator LeFavour** stated that she has concerns about the methods of disclosure and would like assurance that all charges for every possible item that could be charged for will be listed at the time an individual chooses to enter a facility. **Mr. May** acknowledged that all items will be listed. **Senator LeFavour** asked **Mr. May** to repeat that affirmation and he did so. **Vice Chairman Broadsword** asked **Mr. Vande Merwe** if the Idaho Health Care Association supports this rule? **Mr. Vande Merwe** responded "Yes." **Senator LeFavour** further inquired if there was a requirement regarding the size of font to be used in printed documents. **Mr. May** stated that there was no requirement to his knowledge and deferred the question to **Mr. Vande Merwe** who advised that the statute requires that documents be transparent and clearly understandable. **Senator LeFavour** stated that previous advice indicated that the meaning of "transparent" would be spelled out. **Mr. Vande Merwe** indicated he was not sure how that would be regulated. **Senator LeFavour** stated that these documents are as important as any bank or real estate transaction and the Committee needs to make sure at the outset that they have all the information in an understandable form before them as they make the decision to enter a facility.

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

**MOTION**

**Senator Bock** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0322-0901. The motion carried by **voice vote**, with **Senator LeFavour** voting Nay.

**ADJOURNMENT**

**Vice Chairman Broadsword** returned the gavel to **Chairman Lodge** who adjourned the meeting at 3:58 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 20, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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 at 3:08 p.m. She welcomed guests, and passed the gavel to **Vice Chairman Broadsword** to proceed with rules review for the Department of Health and Welfare.

#### RULES

**16-0404-0901** Relating to Early Intervention Services for Infants and Toddlers (Pending Fee).

**Mary Jones**, Program Manager for the Infant Toddler Program, Division of Family and Community Services (FACS), Department of Health and Welfare, presented Docket 16-0404-0901. She advised that because of concerns about program funding, revenue projections, and receipts, the Department has proposed a sliding fee schedule be implemented in the rule to establish a process to charge fees to families receiving early intervention services for eligible infants and toddlers. The sliding fee schedule is based on ability to pay for families with incomes above 200% of Federal Poverty Guidelines. **Ms. Jones** provided the Committee with a chart detailing examples of cost scenarios for large and small families with differing income levels. A cap is included to assure that no family will be charged more than three percent of their taxable income. This cap will limit the cost for all families and will assist families that have multiple children receiving early intervention services and children with significant disabilities who need very intensive services. Changes have been made in the definition of family household and taxable income, services subject to family fees, calculation of family household income and family fee amount, and third-party payors. The rules outline the ways to verify a family's taxable income. **Ms. Jones** advised the rules provide that no child will be denied early intervention services because of a family's inability to pay to protect access to needed services.

**Ms. Jones** requested that the Committee approve this Docket as presented.

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** noted that a letter the Committee received from the Idaho Council on Developmental Disabilities (ICDD) alleges that there will be no or minimal savings if this rule is approved, and asked if **Ms. Jones** agreed with that statement? **Ms. Jones** responded that she does not agree with that statement. She does believe there will be savings, but because the Department does not collect income information it is difficult to provide accurate information on what the savings will be. **Senator Darrington** asked if **Ms. Jones** knew on what basis ICDD arrived at the conclusion that there would be no savings and what they might know that the Department does not. **Ms. Jones** advised that she did not know the answer.

## TESTIMONY

**Jim Baugh**, Executive Director, Disability Rights Idaho, spoke in **opposition** to Docket 16-0404-0901. He complimented the Department on their process for developing these rules. He stated the Department was genuinely engaged with stakeholders and was responsive to concerns that were raised. He advised that although these rules for the most part impose a small charge for a service of great value, studies of similar small charges for services of great value have shown that it induces a significant percentage of families not to take advantage of the services. **Mr. Baugh** indicated that early intervention services are enormously beneficial to children with developmental disabilities and in the long run, result in greater independence and less costly support services, or the elimination of the need for services altogether. He stated that any co-pays which discourage full participation are not good public policy.

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

**Vice Chairman Broadsword** inquired of **Mr. Baugh** how he arrived at the fact that approximately 12% of people would opt out of a program rather than pay a small co-pay, and whether he did any research on how many people take advantage of a program when they do not have to pay. **Mr. Baugh** indicated that the study he cited was not specific to infants and toddlers. He admitted this does not predict the percentage of people who would respond to this co-pay, but that it does reflect the tendency of people to forego clearly valuable services and treatments based on a very small contribution. Regarding what would prevent people from taking advantage of a program just because it is free, he stated that no one wants to take advantage of developmental services such as hearing aids or physical therapy unless they have to. He further stated that in the area of developmental disabilities, the planning process is done by professionals in the Department and is not determined by what the parent

wants or asks for.

## TESTIMONY

**Marilyn Sword**, Executive Director, Council on Developmental Disabilities (CDD), spoke in **opposition** to Docket 16-0404-0901.

**Senator Darrington** requested that **Ms. Sword** address his previous questions related to the basis for her statement that there would be no cost savings if this rule is implemented. **Ms. Sword** indicated that she could have been more artful in the language in her letter. She stated that she could have said, "We don't know what the savings would be," and that probably would have been more accurate. She based her comment in the letter on the language of the Docket which indicated uncertainty as to what the cost would be to administer this rule, estimating that it would cost 15 to 20 thousand in the current fiscal year for system enhancement as well as staff support in subsequent years that might offset the income.

**Ms. Sword** stated that CDD's opposition to the rule is also based on a concern that it might be a disincentive for people to use the service and requested the Committee reject the rule.

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

**Vice Chairman Broadsword** asked if **Ms. Sword** would also say we do not know if there will be people who do not use the services because of the co-pays? **Ms. Sword** stated that CDD agrees with **Mr. Baugh's** comments about overutilization. It is the position of CDD that any public policy that might deter families from seeking early intervention services during a very important development stage in a child's life might have significant financial and emotional consequences down the road.

**Senator Darrington** noted that it is human nature to prefer free services. However, if you can get \$100 in services for \$10, why not take them. **Senator Coiner** commented that people do not always appreciate things that come easily or are free, and he does not see this program as onerous to anyone with a three percent cap up to 1000% of the poverty level. He further stated that if people have a personal investment they take more ownership in what they are receiving and they have more respect for what it takes to get it to them.

**Senator McGee** commented that he agreed with the comments of **Senators Darrington** and **Coiner**. He stated that this is just the first of difficult decisions that will need to be made this session in order to continue to provide services to the citizens of the State of Idaho.

## MOTION

**Senator Darrington** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 16-0404-0901. The motion carried by **voice vote**.

**Vice Chairman Broadsword** noted that it is her hope the Department will

take to heart these concerns and work with any individuals who might have difficulty meeting the requirements and come back next year and let the Committee know if this program works as is or if it needs to be adjusted.

**16-0411-0901**

Relating to Developmental Disabilities Agencies (Pending).

**Randy May**, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, presented Docket 16-0411-0901. He stated that the Department is responsible for surveying and certifying developmental disability agencies in the State, and statute directs the Department to establish operational protocols and related policy where needed to encourage service providers to obtain national accreditation. This rule amends the renewal of certification for Developmental Disabilities Agencies to no greater than three years to align the rule with the Commission on Accrediting Rehabilitation Facilities. It further removes references to the Idaho State School and Hospital (ISSH) Waiver.

**Mr. May** requested that the Committee approve this Docket as presented.

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

**Senator Coiner** asked for an explanation regarding the ISSH waiver. **Mr. May** advised that the ISSH waiver was designed to treat those who had reached 13 years of age as adults. That waiver was allowed to lapse and therefore is being deleted from the language of this rule.

**MOTION**

**Senator Coiner** moved, seconded by **Senator Smyser**, that the Committee adopt Docket 16-0411-0901. The motion carried by **voice vote**.

**16-0601-0901**

Relating to Child and Family Services (Pending)

**Shirley Alexander**, Child Welfare Program Manager, Division of Family and Community Services, Department of Health and Welfare, presented Docket 16-0601-0901. She advised that the majority of children in foster homes have their needs met by a basic foster home, but some children who are difficult to place and hard to maintain in foster care need a higher level of foster home. The majority of this pending rule addresses those changes to the higher level of foster homes. The Department believes that this pending rule will increase stability of children in foster care by preventing frequent moves and giving those foster parents additional qualifications that will help keep them safe and maintain them in those homes. **Ms. Alexander** reviewed the changes and stated that adoption of this rule will: (1) implement a treatment foster care model that will increase stability for children in foster care; (2) streamline our adoptive process; and (3) bring the Department in line with the federal Fostering Connections to Success and Adoption Assistance Act.

**Ms. Alexander** requested that the Committee approve this Docket as presented.



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

**Vice Chairman Broadsword** inquired whether “treatment foster care” is defined somewhere in the rule and, if not, will that be a problem? **Ms. Alexander** responded that she did not believe it was but the Department believes that the qualifications have been clearly outlined with regard to that higher level of home. **Senator McGee** asked that **Ms. Alexander** explain the fiscal note indicating there is no fiscal impact to the state general fund when the rate is being raised from \$1,000 to \$1,800? **Ms. Alexander** stated that the rule states the rate can go up to \$1,800, that does not mean that every foster home will be at that level. The Department is hopeful that this rule will help keep children in their communities in a family life setting rather than in a residential facility at a rate of \$5,000 and up. **Senator Coiner** asked whether these placements are short term or if there is a possibility of them stretching into a longer term foster care? **Ms. Alexander** advised that these are short term treatment homes and the standard is for a six months review. **Senator Coiner** asked what monitoring is in place so that cottage industries are not created? **Ms. Alexander** stated that before a child is placed a placement committee meets and this level of foster home must be approved by the program manager. The best monitoring system is in the Departments information system which releases payments only for a period of six months without a review.

**Senator Smyser** asked if there was dialogue with foster families as these changes were drafted. **Ms. Alexander** advised that hearings were held in three locations throughout the State, so the opportunity was there. However, no public comments were presented by foster parents. **Senator Smyser** asked if anyone attended the public meetings? **Ms. Alexander** deferred the question to Children’s Mental Health Program Manager, **Chuck Halligan**, who sponsored those meetings. **Mr. Halligan** indicated that some people were in attendance but there were no comments on this rule. He advised there was also a public comment period and no comments were received. He stated that he held a one-on-one conversation with a treatment foster parent from North Idaho and she was very pleased with the way the rule was written and agreed with the methodology.

**Senator LeFavour** inquired if these are children who cannot be maintained in residential care. **Ms. Alexander** responded, “Yes,” they have behavior mental health issues such that a residential foster home cannot maintain them. The option is to place them in residential facilities.

**Vice Chairman Broadsword** advised the Department that foster families are a prized possession, and they are feeling very disenfranchised. Therefore, anything the Department can do to help them become a part of the process will be greatly appreciated by the Committee.

## MOTION

**Senator McGee** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 16-0601-0901. The motion carried by **voice**

**vote.**

**16-0602-0901**

Relating to Standards for Child Care Licensing (Pending Fee).

**Landis Rossi**, Program Manager, Division of Family and Community Services, Department of Health and Welfare presented Docket 16-0602-0901. She provided an overview of the actions the Department is taking during this Legislative session related to basic daycare licensing. The Department has received a significant number of comments related to the requirement for staff to child ratio. There is concern that the changes to ratio and group size passed during 2009 will cause a significant increase in cost for families and cause providers to go out of business. The Department is also concerned that providers will limit the number of two year old children they will care for in order to maintain profitability. **Ms. Rossi** advised that the Department is moving forward with legislation that will amend staff to child ratio and group size requirements. However, this rule change is necessary in order to give the Department the authority to enforce the law governing basic daycare licensing. Amendments and clarifications have been made to definitions, health and safety standards for firearms, fire extinguishers, fire exits, supervision, type of licenses, employee and child records requirements, and to align these rules with statutes. The rule provides a new fee schedule to help support the administrative costs related to daycare licensing. Day care centers caring for over 13 children will be assessed a fee of \$175, and group providers caring for 7 to 12 children will be assessed a \$100 fee.

**Ms. Rossi** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** noted that there is a section that does give an exemption for a local option if a county has an ordinance or regulation that is different. **Ms. Rossi** responded that is correct, as long as the city ordinance is at least as restrictive as the State, they would be exempt.

**MOTION**

**Senator Hammond** moved, seconded by **Senator Coiner**, that the Committee adopt Docket 16-0602-0901. The motion carried by **voice vote**.

**16-0720-0901**

Relating to Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs (Pending Fee).

**Bethany Gadzinski**, Substance Use Disorder Bureau Chief, Division of Behavioral Health, Department of Health and Welfare, presented Docket 16-0720-0901. She reviewed the prevention programs and treatment sites within the State of Idaho, and advised that this rule has support from the Interagency Committee on Substance Abuse Prevention and Treatment, the Board of Occupational Licenses, The Regional Advisory Committees and several independent private treatment providers. The rule updates the approval process for substance use disorder facilities

and programs. The rule:

(1) Implements formal standards for Recovery Support Services to include case management, Adult Staffed Safe and Sober Housing, Child Care, Life Skills, Transportation and Alcohol/Drug Testing.

(2) Tightens who can provide services to publicly funded clients.

(3) Revises the application process for program approval and adds fees for the initial application and renewal of programs.

(4) Broadens where clinical supervision can take place.

**Ms. Gadzinski** provided the committee with a chart comparing the proposed rule with the previous rule and reviewed that chart. She requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** questioned the formatting of the rule because it is hard to find changes. **Ms. Gadzinski** responded that this is a voluminous rule and portions were incorporated from the previous rule and new portions, rather than being underlined, are italicized. **Vice Chairman Broadsword** requested that Dennis Stevenson of the Legislative Services Office explain the formatting of the pending rule. **Mr. Stevenson** confirmed that italicized text is new language. **Senator Darrington** asked if the next docket is intended to repeal the former rule? **Ms. Gadzinski** advised there are many parts of the docket she will be asking to have repealed which have been moved over into the new rule and the items she outlined in her testimony are the major changes. **Senator Smyser** asked if the change from 7 days to 30 days in the time required to complete the treatment plan would mean that the applicant will not receive treatment until the plan is completed? **Ms. Gadzinski** responded that the applicant will continue with their treatment, but the treatment plan does not have to be finalized for 30 days. **Vice Chairman Broadsword** asked for a definition of the term "psychologist extender." **Ms. Gadzinski** advised that this designation came from the Board of Licensure and, to her knowledge, applied to a psychologist extending their psychology license to cover a person performing work for the psychologist.

## TESTIMONY

**Jeff Morrell**, Executive Director, Redmont Health Services LLC, Boise, Idaho, spoke in **opposition** to Docket 16-0720-0901. He complimented the Department on its work in reviewing this issue and rewriting rules. However, it is his opinion that the requirement for licensure for private providers requires a substantial amount of rule compliance which is not required for facilities to provide care for private pay clients who either self pay or are commercially insured.

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

**Chairman Lodge** asked **Mr. Morrell** how closely he has worked with the

Department on licensing or the certification process, whether he could provide a listing of the problems he is having, and whether he had been given information about what is needed to complete his license application? **Mr. Morrell** advised that he had worked hand in hand throughout the rule rewrite regarding his application. His issue is with the volume of policies and procedures that must be documented. He indicated he has been given a list of what is needed to complete his license application and still needs to obtain documentation of qualified professional status for himself and staff? **Chairman Lodge** advised him to complete that process. **Mr. Morrell** stated that he supported the rule generally, but objects to the fact that as a private provider he has to meet the same requirements as a facility licensed to receive State funding.

**Ms. Gadsinski** advised the Committee that based on Idaho statute the Department does not have jurisdiction over treatment providers who are not taking state funds. If a treatment provider wishes to voluntarily go through the process to satisfy private payors, they can do so..

**MOTION**

**Senator LeFavour** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0720-0901. The motion carried by **voice vote**.

**16-0603-0901**

Relating to Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs (Pending).

**Ms. Gadsinsky** presented Docket 16-0603-0901, requesting repeal of this pending rule inasmuch as it has been replaced by Docket 16-0720-0901.

**MOTION**

**Senator LeFavour** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 16-0603-0901. The motion carried by **voice vote**.

**16-0603-0902**

Relating to Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Treatment Programs (Temporary).

**Ms. Gadsinsky** presented Docket 16-0603-0901, requesting repeal of this temporary rule inasmuch as it has been replaced by Docket 16-0720-0901.

**MOTION**

**Senator Darrington** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0603-0902. The motion carried by **voice vote**.

**16-0701-0901**

Relating to Behavioral Health Sliding Fee Schedules (Pending).

**Scott Tiffany**, Bureau Chief for Mental Health, Division of Behavioral Health, Department of Health and Welfare, presented Docket 16-0701-0901. He advised that this rule provides the Department with a sliding fee scale for adult mental health, children's mental health, and substance use disorders. The rule changes the definition of "family household" to include all household members and their income except for persons on supplemental security income, disability income, or non-dependent adult siblings.

**Mr. Tiffany** requested the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** noted that the economy has resulted in a lot of blended families with adult children moving home and inquired whether the income of those adult children would be considered under this change. **Mr. Tiffany** advised that non-dependent adult children would be excluded in income calculations.

**MOTION**

**Senator Darrington** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0701-0901. The motion carried by **voice vote**.

**16-0739-0801**

Relating to Designated Examiners and Designated Dispositioners (Pending).

**Mr. Tiffany** presented Docket 16-0739-0801. He stated that the main purpose of this chapter is to define the minimum qualifications for individuals who wish to be Designated Examiners. This rule defines the qualifications, appointment requirements, an appointment process for designated examiners and designated dispositioners. This will better ensure these professionals have the education, training, and experience needed to perform reliably and effectively the duties required by these rules. Amendments to the temporary rule clarify the criminal history and background check requirement for individuals seeking reappointment as designated examiners and designated dispositioners. Also, the term "board certified psychiatrist" was removed from the rule.

**Mr. Tiffany** requested the Committee approve this Docket as presented.

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

**MOTION**

**Senator Hammond** moved, seconded by **Senator Darrington**, that the Committee adopt Docket 16-0739-0801. The motion carried by **voice vote**.

**16-0750-0902**

Related to Rules and Minimum Standards for Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units (Fee Rules).

**Mr. Tiffany** presented Docket 16-0750-0902. He advised that this rule creates the opportunity for the operation of a new substance use disorder and mental health facility in Idaho. Through informal negotiations with stakeholders, contractors, and individuals interested in the Detox/Mental Health Diversion Units, the Department is proposing changes to the pending rule to set forth policies and procedures, staff qualifications and responsibilities, building construction and physical standards, and other miscellaneous requirements. The fees being imposed in this rule are necessary to avoid immediate danger to those individuals being served in

a nonhospital, medically-monitored detoxification/mental health diversion unit.

**Mr. Tiffany** requested the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** inquired why a facility needs to have the Department's approval on building construction if they have already complied with local building code regulations. **Mr. Tiffany** advised that in addition to local building codes, there are other requirements specific to detox facilities that must be met, such as square footage per client, doors that open into the hallway, and visibility from the nurses station.

**Senator LeFavour** asked if this was entirely a new rule or if the underlined text is language from the Oregon statutes? **Mr. Tiffany** advised that the rule before the Committee is a new rule. Sections from 600 on were before this Committee last year, and since that time the underlined language has been added. The Oregon statute did not contain a lot of detail and the new language is a compilation of many other state's rules.

**Senator Darrington** asked why a CEO or Administrator is required to have a clinical license rather than an MBA or business credential inasmuch as that person ought to be the business manager at the facility and the direct care staff ought to be the licensed clinicians? **Mr. Tiffany** stated that the intent behind that requirement is to make sure the CEO, the person ultimately responsible for operating the facility, has a reasonable foundation of knowledge about the client population at the facility. He stated that a detox facility has unique risks and the CEO should be able to handle all situations. **Senator Darrington** noted that in his experience sometimes clinicians are not as good as trained administrators in handling the business functions. **Vice Chairman Broadsword** noted that neither of the CEO's at Idaho's state hospitals are clinicians, and **Senator Darrington** added that had been the case since the early 80s.

#### MOTION

**Senator Darrington** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 16-0750-0902.

**Senator LeFavour** asked **Mr. Tiffany** to point out where client rights are contained in the rule. **Mr. Tiffany** directed her to Page 247, Section 265. The motion carried by **voice vote**.

#### 16-0737-0901

Relating to Children's Mental Health Services (Pending).

**Chuck Halligan**, Program Manager, Children's Mental Health, Division of Behavioral Health, Department of Health and Welfare, presented Docket 16-0737-0901 which modifies the children's mental health rules

concerning treatment foster care. Treatment foster care is an alternative to residential care for children with extreme behavior or emotional issues that need temporary care and treatment outside of their own homes. Since both Child and Family Services and the Children's Mental Health program use the same treatment foster care resources, this rule was aligned with the corresponding rules in the Department's Child and Family Services chapter. This will reduce confusion for treatment foster care providers, make training of providers more efficient, increase the stability of placements for children and youth who are hard to place and hard to maintain in foster care, and improve outcomes for children and youth in treatment foster care.

**Mr. Halligan** requested the Committee approve this Docket as presented.

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

**MOTION**

**Senator McGee** moved, seconded by **Senator Smyser**, that the Committee adopt Docket 16-0737-0901. The motion carried by **voice vote**.

**ADJOURNMENT**

**Vice Chairman Broadword** concluded the rules review and returned the gavel to **Chairman Lodge**. There being no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 4:48 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 21, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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 at 3:03 p.m. She welcomed guests and passed the gavel to **Vice Chairman Broadsword** to begin presentation of rules review for the Department of Health and Welfare.

#### RULES

**16-0318-0901** **Paul Leary**, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, presented Docket 16-0318-0901. He stated that in order to meet legislative intent for Medicaid cost containment in HB 322 for the State fiscal year 2010, the Department is implementing changes in this chapter to add a cost-sharing premium for Home Care for Certain Disabled Children (HCCDC) also known as Katie Beckett (KB). The rules in this docket establish cost-sharing requirements based on ability to pay for families whose children are eligible for HCCDC. The Department believes that these rules are responsive to public comment and meet the legislative intent of HB 322, section 8 as approved by the 2009 Legislature. He provided the committee with a chart listing public comments and the Department's responses.

**Mr. Leary** requested the Committee approve this Docket as presented.

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

**Senator McGee** stated he would like to be clear on testimony that if the Department determines the cost sharing premium is an undue hardship on a family, the disabled child can still be included under the KB program and asked if that was correct? **Mr. Leary** responded that this does not affect the eligibility of the child for the KB program. KB eligibility is solely on the income of that child. However, if a family has undue hardship we



can give them a waiver for that premium as long as they report those conditions. This is set forth in Section 205.06 of the rules. **Senator McGee** noted that he wanted this to be clear as it is very important for everyone to understand that clause exists and that option is available. **Vice Chairman Broadsword** asked how difficult it might be for parents to get a waiver. **Mr. Leary** advised it should not be a cumbersome process. The rule indicates undue hardship exists when an unexpected expense would cause a family to forego basic food or shelter in order to make a premium payment. Detailed documentation of a families living and insurance expenses demonstrating such hardship must be provided to the Department. **Vice Chairman Broadsword** asked who within the Department would make that decision? **Mr. Leary** advised it would be done in the central office since that is where premiums are collected. **Vice Chairman Broadsword** asked **Mr. Leary** to clarify the rule regarding premiums paid by a parent with more than one child eligible for KB. **Mr. Leary** stated that if a parent has two KB children and the family income is between 150% and 185% of the Federal Poverty Guidelines (FPG), the premium per child would be \$15 with a maximum premium of \$30. If family income is above 185% of the FPG the premium is limited to one \$30 premium per family.

**Senator Darrington** asked if the statute passed by the Legislature requires a cost share? **Mr. Leary** stated that it does. **Senator Darrington** also asked if the co-pay originally proposed has been reduced? **Mr. Leary** stated that the schedule was changed to make it a smooth schedule rather than a step wide schedule. **Vice Chairman Broadsword** asked for clarification that the Medicaid Reduction Act did allow for cost sharing and that gives the state the ability to require cost sharing for a number of programs. **Mr. Leary** indicated that is correct. **Senator LeFavour** requested information on co-pays for families with different income levels. **Mr. Leary** provided an example: a premium of 1% would be charged at about 185% of FPG, the monthly gross income in that instance is \$3,400 to \$4,594. The premium if private insurance is not provided would be between \$34 to \$86 per month, and if private insurance is provided for the child, the premium would be between \$26 and \$34 per month.

## TESTIMONY

**Teresa Ball**, Meridian, Idaho, parent of a disabled child, spoke in **opposition** to Docket 16-0318-0901. She stated that while the Department has listened to concerns of parents regarding the Katie Beckett (KB) cost sharing recommendation and has made some revision in response to those concerns, the revision continues to contain significant flaws that prohibit it from being reasonable or appropriate. She stated that the recommendation bases premium percentages on a family's gross income. Families with disabled children already pay income tax, and an additional income tax, in the form of KB premiums is inappropriate. **Ms. Ball** further stated that the premium schedule is unreasonable and that four percent to five percent of family income will place an extreme financial burden on special needs families. She stated that the disproportionate allocation of premiums on middle-income families is unacceptable. **Ms. Ball** noted that the 25% deduction for families covering their disabled children on private insurance is a positive addition; however, the deduction is too low when considering the significant cost-

sharing provided by families through private insurance coverage. She also stated that the recommendation fails to consider the amount or frequency of services received by KB participants and thus penalizes families who make a good faith effort to utilize services efficiently. **Ms. Ball** detailed her thoughts regarding the impact of this legislation, suggested alternatives, and asked that the Committee consider: (1) utilizing net income for premium calculations; (2) reduce the premium schedule to a maximum of three percent and add annual maximums; and (3) incorporate premium methodology to consider amount of use.

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

**Vice Chairman Broadsword** questioned what would happen to families over 1000% of the FPG if the premium was limited to three percent up to 1000% of FPG. **Ms. Ball** stated that by utilizing an out-of-pocket maximum, her recommendation is \$5,000, those individuals would be taken care of, and the program would be aligned closer with a private insurance plan. The current plan would require a family with an income of \$198,000 to pay \$9,900 annually for participation in the KB program for one child.

#### TESTIMONY

**Tracy Warren**, Program Specialist, Idaho Council on Developmental Disabilities (ICDD), spoke in **opposition** to Docket 16-0318-0901. She stated that the intent of the KB program is to provide community-based services that children with significant disabilities need so their families can care for them at home instead of placing the child in an institution. However, these rules require those parents who care for their child at home to pay a premium for these services while parents who choose to place their child in an institution do not pay a premium. The ICDD believes that requiring families to pay premiums for services their children need is counterproductive to both the intent of the KB program and to the Legislature's intent to save taxpayer dollars. .

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

**Vice Chairman Broadsword** noted that some of the needs of KB children are covered under school-based services, and asked **Ms. Warren** if she could detail what is not covered by school-based services that the family would be responsible for? **Ms. Warren** advised that children can receive services through the school district such as speech/language therapy, physical therapy, and occupational therapy through individual education programs during school hours, but many of these children require services outside of school hours, sometimes 24 hours per day.

#### TESTIMONY

**Laurie Barrowman**, parent of a 14-year-old disabled son, spoke in **opposition** to Docket 16-0318-0901. She expressed appreciation for the Department's work on behalf of the KB program. Her concern is that

families who do not keep their children at home do not have to pay a premium, while those who attempt to care for their children at home are required to pay a premium for services. As a parent of an autistic child she incurs many out of pocket expenses that are not covered and the additional expense of premiums will be a burden. She carries private insurance at a cost of \$400 per month and has experienced difficulty with durable medical equipment providers not wanting to provide supplies due to the requirements to bill the private insurance and then resubmit the claim to medicaid. **Ms. Barrowman** pointed out that her son is non-verbal and is lucky to get one-half hour of school based speech/language therapy.

**Vice Chairman Broadword** asked if the \$400 premium is for the entire family. **Ms. Barrowman** indicated it is, but that is a major budget expenditure. She indicated she has several out-of-pocket costs not covered by insurance related to her son's care. He is incontinent and although Medicaid covers the cost of pull-ups, she struggles to find a supplier with a reasonable cost. **Vice Chairman Broadword** invited her to contact her after the meeting as she could provide her with a source.

#### TESTIMONY

**Toni Brinegar**, parent of a son with disabilities, spoke in **opposition** to Docket 16-0318-0901. She stated she shares the views of those who have already testified in opposition to this rule. She questions whether the State of Idaho will actually make money on these premiums, and noted there are costs associated with caring for a disabled child in the home, including special transportation and child care costs that are not reimbursed by private insurance or Medicaid. Because she carries private insurance, and Medicaid reimbursement rates are so low, Medicaid does not often incur cost for ordinary medical expenses. **Ms. Brinegar** stated both she and her husband work and pay taxes. Therefore, they are contributing members to Idaho Medicaid and other benefit programs. She feels imposing a premium on top of taxes already paid on income is double taxation.

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

#### TESTIMONY

**Camie Larsen**, parent of a son with Down Syndrome, spoke in **opposition** to Docket 16-0318-0901. The KB program has provided her son with an intensive therapy program which allows him to achieve physical, verbal and developmental milestones. She would not be able to afford these therapies without the KB program. Her concern is that she will be paying twice for her son's services, once through private insurance and a second time for the Medicaid premium. Even though a 25% discount is allowed on the Medicaid premium for having private insurance, it does not cover her son's portion of the family's private insurance, and therefore is a disincentive to keep her son on private insurance. She noted that through the Health Insurance Premium Program (HIPP) she could be reimbursed, but questioned why if money is available under the HIPP program, the Medicaid premium isn't lower? She would like to see a better way of distributing the costs among those who receive services.

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

**Vice Chairman Broadsword** asked **Mr. Leary** to address the comment about the HIPP program and why those funds cannot be used in the KB program. **Mr. Leary** deferred to **Leslie Clement**, Administrator, Division of Medicaid, Department of Health and Welfare, who advised that HIPP is a State and federal share program. Medicaid does a cost effective analysis to see whether it is more cost effective to help offset the private premium rather than be the primary payor. This would probably reduce the premium proposed under these cost sharing rules somewhat.

**TESTIMONY**

**Richelle Tierney**, parent of a son with autism, spoke in **opposition** to Docket 16-0318-0901. She and her husband have three children and both work full time. They incur costs for alternative therapies that are not covered by private insurance or Medicaid. To have to incur this additional cost will put a strain on her family, and she feels it is penalizing families for taking on the responsibility of caring for their disabled children at home.

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

**TESTIMONY**

**Renee Lumley**, parent of a 14-year-old disabled son, spoke in **opposition** to Docket 16-0318-0901. Her son requires 24-hour care. She related an incident where a drunk provider showed up for child care. She indicated a difficulty in working with Medicaid billing. She receives approximately six letters each week asking if a third party payor is responsible for her son's expenses when her son's disability arises from a brain tumor and not a traumatic injury. She feels this is a waste of time and money. **Ms. Lumley** stated that the school based services are not nearly as thorough as the services provided by the Elks.

**Senator Darrington** noted **Ms. Lumley's** testimony regarding a drunk child care provider, and asked if she had called the police at the time of the incident? **Ms. Lumley** responded that she smelled alcohol on the provider's breath, had not called the police, but did call the provider's agency.

**TESTIMONY**

**Jim Baugh**, Executive Director, Disability Rights Idaho, spoke in **opposition** to Docket 16-0318-0901, stating that he is not opposed in principle to cost sharing or to use of premiums or co-pays in the Medicaid programs. He stated that the KB program is designed to save Medicaid money by discouraging more expensive institutional placements. His concern is that we pay very close attention to what incentives and disincentives are created by these rules. He feels the premiums levied on the parents of KB children will add to the burdens of choosing the home option and increase the incentives for facility based care. He stated that because of the requirement to pay the federal government 80% of all premiums recovered, those funds will be lost to Idaho families and lost to

the Idaho economy.

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

#### TESTIMONY

**Charlene K. Quade**, a resident of Boise, Idaho, appeared as a parent of, Guardian of, a court appointed Guardian Ad Litem, and attorney of persons with developmental disabilities. She spoke in **opposition** to Docket 16-0318-0901. She provided the committee with articles related to the needs of a person with disabilities in Idaho and the resultant lives and conditions of those served in institutions. She stated that imposing Medicaid premiums for Children enrolled in the KB program presents an incentive for families to refrain from meeting the demands of retaining their children at home but rather place their child in an institutional setting.

**Senator Darrington** asked if **Ms. Quade** would prefer that the KB program not require cost sharing, but that other Medicaid programs require cost sharing? **Ms. Quade** stated that she does oppose parents having to pay a premium as there will be families who will be unable to do so, and the children will not receive necessary services. She further stated that she does not view the legislation enacted last summer as commanding that premiums be assessed, but rather that the Department "should consider" doing so. **Senator Darrington** commented that there are some on the Committee who personally feel the pain of these parents. However, the dilemma is that all programs have great value to someone's well being and everyone can find their program more valuable than another. **Ms. Quade** stated that she recognized that, but is also aware that research shows the better we prepare these individual children at early ages, the better society is in the end.

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

#### TESTIMONY

**Evelyn Mason**, Executive Director, Idaho Parents Unlimited, spoke in **opposition** to Docket 16-0318-0901. She stated that her agency has served as a mentor to families who have children with disabilities for 25 years. The services that are provided to these families are critical in helping them to arrange resources and keep these children in their homes. The agency's technical expertise includes working with schools to obtain Medicaid reimbursement for services. She stated she is aware of the impact on children when parents have to withdraw from KB services. **Ms. Mason** advised that in negotiations between the U.S. Department of Education and the State, districts across Idaho were allowed to reduce the maintenance of effort regarding special education budgets across nearly every district. This is a one-time historic opportunity that many of our schools are taking advantage of at this time. She is concerned about what will happen when these stimulus dollars go away. She related her personal story of having to choose to leave employment in order to qualify for assistance in order to provide needed insurance. She stated that what is happening today is impacting hundreds of families who will have to

make a choice about their future employment and choices between their children and their homes.

#### TESTIMONY

**Angela Lindig**, parent of two children with disabilities, an employee of Idaho Parents Unlimited, and Chair of the State Independent Living Council, spoke in **opposition** to Docket 16-0318-0901. She stated that she agreed with much of the previous testimony. One of her children is eligible for the KB program, but the other is not. The child who is not covered incurs substantial expenses which are not taken into account when the cost-sharing premium is set.

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

**Vice Chairman Broadsword** recognized **Mr. Leary** who read a copy of the intent language included in **HB 322**, and concluded that the intent language does not contain any mandatory words; the words are “requested” and “should,” and not “must” or “shall.” He provided a copy of the document quoted for the Committee (Attachment #10).

#### TESTIMONY

**Laura Larson**, parent of a daughter with autism and a school teacher, spoke in **opposition** to Docket 16-0318-0901. She stated that she is not opposed to cost sharing, but thought it would be based on income and objects to having to list the value of all assets, including bank accounts and numbers. Her daughter has benefitted from the intensive behavior therapy provided through the KB program, but has now used up the three years allowed for behavior intervention and is slowly regressing in her abilities.

**Vice Chairman Broadsword** asked **Mr. Leary** to conclude his remarks and answer questions that had been raised in the public testimony. **Mr. Leary** deferred the question raised by **Ms. Larson** to **Peggy Cook**, Program Manager, Medicaid Eligibility, Department of Health and Welfare, who stated that the renewal form is required for families applying for one kind of medical service for a child so that the Department has the ability to look at every other kind of program that child might be eligible for before a decision is made to put them on a cost sharing program. With the implementation of the new automated system, the Department has started asking those questions consistently so it can give families the widest variety of options for benefit eligibility that are available.

**Vice Chairman Broadsword** noted that she would have problems giving out bank account numbers and does not see the value of that. **Ms. Cook** responded that to her knowledge only the bank balance is requested, and if numbers have been requested it has been inadvertent, and the Department will ask that this be modified.

**Mr. Leary** stated that this docket is presented in response to **HB 322**. He stated that the Department has struggled with the definition of undue hardship and will look at what other health insurers require. **Vice Chairman Broadsword** asked **Mr. Leary** to again confirm that the cost share is between the Department and the parent, and if for some reason the cost share premium is not made, the child will still receive the

services? **Mr. Leary** responded that is absolutely true on two levels. First, KB eligibility, and second, the maintenance of effort through the American Recovery and Investment Act.

**Senator LeFavour** asked that **Mr. Leary** provide some background information regarding the enrollment numbers in the KB program and what the anticipated cost savings is to the State general fund by the cost sharing? **Mr. Leary** stated that the enrollment is generally between 2,100 and 2,200 children in the KB program. He advised that the Department really does not know what the absolute cost or impact will be. The fiscal statement was established by looking at income levels across the State for all families and assuming that individuals in the KB program reflect that spread. The Department estimates an overall savings of about \$1,000,000. The State savings would be about \$210,000, but this won't be certain until we start collecting income. **Senator LeFavour** noted that this is a small amount compared to the hardship we might cause with the implementation of cost sharing and the potential under utilization that might result. She noted specifically that 80% of premiums collected will go to the federal government.

**Senator Coiner** asked if costs to administer this payment program are included in the fiscal note? **Mr. Leary** responded that it is. **Senator Coiner** asked if personnel costs were estimated as a number of hours or people necessary to administer the program? **Mr. Leary** indicated he did not have the exact numbers, but explained that with the new MIS system the Department was able to create the billing and collection software in the new system.

#### **MOTION**

**Senator Coiner** noted that he does not see that the net gain is worth the cost incurred and moved that the Committee reject Docket 16-0318-0901. The motion was seconded by **Senator LeFavour**.

#### **SUBSTITUTE MOTION**

**Senator McGee** commented that this is a difficult vote, but just the beginning of difficult decisions that need to be taken up this year. He noted tears in the eyes of many, and that this affects the public as well as the Committee personally. He advised, however, that the State has a major problem in that for this fiscal year we are \$200 million behind. For fiscal year 2011 we are \$400 million behind, and although he understands the logic of **Senator Coiner's** motion, he made a substitute motion that the Committee adopt Docket 16-0318-0901. The substitute motion was seconded by **Senator Darrington**, who noted his appreciation for the comments of **Senators McGee** and **Coiner**, and noted the eloquence of the testimony of **Ms. Quade**. He pointed out that any program is important to the participants, and we must make decisions on many important programs where savings are no larger than this one.

**Senator Coiner** expressed his appreciation to everyone who testified before the Committee, noted that with the federal cost share we are talking about \$210,000 for the general fund, and turning away about \$1 million. **Vice Chairman Broadsword** indicated this is a cost share paid by parents, so it is \$210,000 less we have to budget.

**Chairman Lodge** thanked all of the guests for attending and indicated how difficult this decision is for the Committee, which only emphasizes the difficulties parents live with every day with disabled children. Her concern is that if we don't try to get more involved and take more accountability to be there for the children's programs, like speech therapy and occupational therapy, so that the learning can continue at home we may get to a point where we cannot sustain any of these programs. She stated she has received hundreds, maybe thousands, of emails and letters from people who are affected by this program, and has also received several letters from people who have moved into this state so they can partake of this program because not all states have adopted the KB program. She has also received letters asking for tax increases so we can afford these programs and letters from people who say they cannot afford to pay any more taxes. She advised with a heavy heart she would support this rule.

**Senator LeFavour** noted the number of times people with disabilities are bearing the brunt of budget cuts. In terms of picking a place to create savings in our budget, we need to select programs that do not take money out of the pockets of those who spend in our communities. She stated that the hardship definition needs work and the definitions for calculating premium should not be based on gross income but could be more carefully crafted.

**Senator Hammond** stated that although these parents are bearing some of the burden of our budget issues, so is every employee who works for the State of Idaho and every vendor who supplies materials to the State of Idaho. It is being shared equally across the State by people throughout the State. His own children who teach are bearing that burden. He stated that we have to keep making little bits of progress, because a little here and there adds up to enough to be able to make programs sustainable.

**Vice Chairman Broadsword** commented that the State's budget deficit is closer to \$500 million rather than \$400 million. The cuts that the Department has had to make in order to meet the holdback will affect every program. She reminded those present that the children will not go without services. She stated she will support the substitute motion knowing that it will be monitored, and if the burden on parents is too high, it will be adjusted. She gave a personal commitment, if reelected, to make sure that this program continues to run in a safe and healthy manner.

**Senator Smyser** commented that it is her hope that the Department has listened well to the individual testimony and will do everything it can to lessen the burden of red tape and paperwork, and fine tune some of those things for the benefit of the children.

## VOTE

**Vice Chairman Broadsword** called for a vote on the substitute motion. **Senator LeFavour** requested a roll call vote. The results of the vote are: **Senator Bock**, excused; **Senator LeFavour**, nay; **Senator Smyser**, aye; **Senator Hammond**, aye; **Senator Coiner**, nay; **Senator McGee**, aye; **Senator Darrington**, aye, **Vice Chairman Broadsword**, aye; **Chairman Lodge**, aye. The substitute motion passed with 6 ayes, 2 nays.



**16-0305-0902**

Relating to Eligibility for Aid to the Aged, Blind, and Disabled (AABD) (Pending Fee).

**Susie Cummins**, Medicaid Program Specialist, Division of Welfare, Department of Health and Welfare, presented Docket 16-0305-0902. She stated that this rule updates the cost sharing section of Medicaid eligibility rules for KB children to align with Docket 16-0318-0901. If the parent fails to make the premium payment, it will not affect the child's Medicaid eligibility.

**Ms. Cummins** requested that the Committee approve this Docket as presented.

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

**MOTION**

**Senator Coiner** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 16-0305-0902. The motion carried by **voice vote**.

**16-0305-0903**

Relating to Eligibility for Aid to the Aged, Blind, and Disabled (AABD) (Pending).

**Ms. Cummins** presented Docket 16-0305-0903, stating that in order to reduce costs, the Department worked with the Social Security Administration (SSA) concerning the State Supplemental Payment program which is a state-funded program providing financial aid to the aged, blind, and disabled population in Idaho. This rule allows the state to remain in compliance with SSA federal regulations and reduce costs. She advised that the rule changes affecting cash aid payments do not affect the person's Medicaid eligibility, but they do allow the State of Idaho to save expenditures on a program that is paid with 100% state dollars. These savings are part of the hold back and have already been removed. If the rule changes in this docket are not passed, the savings will need to be found elsewhere.

**Ms. Cummins** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** asked **Ms. Cummins** to confirm that the estimated savings to the State for this program is \$1,093,920. **Ms. Cummins** indicated that is correct.

**MOTION**

**Chairman Lodge** moved, seconded by **Senator Smyser**, that the Committee adopt Docket 16-0305-0903. The motion carried by **voice vote**.

**16-0305-0904**

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

(Temporary).

**Ms. Cummins** presented Docket 16-0305-0904, advising that the Department is amending these rules to comply with the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008, which includes provisions to improve access for Medicare beneficiaries to receive help with their Medicare costs. MIPPA requires States to align the Medicare Savings Program's resource limits with the Federal Low-Income Subsidy limits. She advised that Idaho will lose Medicaid funding if these rules are not implemented.

**Ms. Cummins** requested that the Committee approve this Docket as presented.

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

**MOTION**

**Senator McGee** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0305-0904. The motion carried by **voice vote**.

**ADJOURNMENT**

**Vice Chairman Broadsword** returned the gavel to **Chairman Lodge**, who complimented her on handling efficiently a very difficult agenda. She thanked the public for attending the meeting and expressed appreciation to those testifying regarding the KB program. She advised that the Committee will help make sure that concerns are heard by the Department. **Chairman Lodge** thanked the Committee for their diligence and adjourned the meeting at 5:00 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 25, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, 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 at 3:05 p.m. She reviewed the contents of Committee folders and passed the gavel to **Vice Chairman Broadsword** to proceed with rules review for the Department of Health and Welfare.

**RULES:**

**24-0301-0901** Relating to the Rules of the State Board of Chiropractic Physicians (Pending).

**Roger Hales**, Attorney providing legal services to the Bureau of Occupational Licenses, presented Docket 24-0301-0901 on behalf of the Board of Chiropractic Physicians. This rule updates the Board's website address. To protect the public, it adds a definition for direct personal supervision, requiring that the Chiropractic Physician overseeing an intern be physically present in the clinic and available to intervene if necessary. It clarifies who qualifies as a chiropractic intern and when a temporary permit is available. This temporary permit is given between graduation and the time the student takes the exam.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Senator Broadsword** noted that the direct supervision rule requires that the supervising physician must be in the clinic, but not in the same room, and inquired whether that could cause a consumer concern? **Mr. Hales** responded that it would depend on what service was being provided. If

the intern is simply taking history it would not be necessary that the physician be in the room. The physician must monitor activities close enough to intervene if necessary. **Senator LeFavour** asked if the supervising physician is the liable party? **Mr. Hales** responded, "Yes, that is right." **Senator Coiner** expressed concern about the temporary practice permit and asked for further explanation on that process. **Mr. Hales** advised that the permit would be issued to someone with advanced training, having graduated from chiropractic college, until they could take the exam. The permit requires that they practice under the direct supervision of the responsible chiropractic physician, so the checks and balances necessary to protect the public are there. **Senator Coiner** asked how often the tests are given? **Mr. Hales** indicated this is a national examination given twice each year.

**MOTION**

**Senator Smyser** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 24-0301-0901. The motion carried by **voice vote**.

**24-0501-0901**

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

**Mr. Hales** presented Docket 24-0501-0901 on behalf of the Board of Drinking Water and Wastewater Professionals. He advised that this rule updates the Board's web address. The rule reduces the fees for endorsement, original license, and the license renewal to reduce the Board's cash balance. He advised that the Board has worked long and hard with Idaho Rural Water Association (IRWA) to address concerns regarding the small entities ability to comply with the rules when it comes to operating water and wastewater facilities. The rule creates, defines, and sets forth the qualifications for a Class 1 Restricted license and Very Small Wastewater System license. The Very Small Wastewater license is based upon DEQ rule changes. The Class 1 Restricted license is designed to assist facilities with part-time operators and staff to allow more flexibility, and is limited to a specific system. This rule will also clarify an ambiguity in the qualifications for a land application license.

**Mr. Hales** advised that IRWA is in support of this rule change, and requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** conveyed the Committee's appreciation for the work of the Board with IRWA and DEQ to solve this problem for the small rural areas.

**MOTION**

**Senator LeFavour** moved, seconded by **Senator McGee**, that the Committee adopt Docket 24-0501-0901. The motion carried by **voice vote**.

**24-0601-0901**

Relating to Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants (Pending Fee).

**Mr. Hales** presented Docket 24-0601-0901 on behalf of the Board of Occupational Therapists. He stated that the 2009 Legislature passed **HB 261** which moved the licensing of Occupational Therapists and Occupational Therapy Assistants from the Board of Medicine to the Bureau of Occupational Licenses. These rules are being amended to comply with those changes to protect the public health, safety and welfare.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** asked if the Bureau has a reciprocal agreement with other states to issue a temporary license to an applicant who is licensed and in good standing to practice in another jurisdiction? **Mr. Hales** responded that the Boards have an enforcement approach; they don't typically have agreements with other states, but they set forth certain standards under which other state licensees can come in and practice under a temporary license until they are fully licensed by Idaho.

**MOTION**

**Chairman Lodge** moved, seconded by **Senator LeFavour**, that the Committee adopt Docket 24-0601-0901. The motion carried by **voice vote**.

**24-1001-0901**

Relating to the Rules of the State Board of Optometry (Pending).

**Mr. Hales** presented Docket 24-1001-0901 on behalf of the State Board of Optometry. He advised that the 2009 Legislature passed **SB 115**, which added the term "opticianry" to the exemptions in the law. This rule provides a definition for "opticianry" as the professional practice of filling prescriptions from a licensed optometrist or ophthalmologist for ophthalmic lenses, contact lenses, and any other ophthalmic device used to improve vision. To benefit the public, it clarifies that failure to release contact lens prescriptions as required by Federal law could be gross incompetence. The rule clarifies the expiration date for prescriptions, spectacles and/or contact lenses for the benefit of the optometrist and the public. Federal regulations require that a prescription for glasses or contacts must last at least one year, unless there is a medical condition that would dictate a shorter time frame. These rules comply with federal programs.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** asked if a current prescription is good for two years will this rule shorten the time frame to one year? **Mr. Hales** advised that certain doctors may give two-year prescriptions, but all the rules required was that the prescription had to have an expiration date. With this change, the rules require that the prescription must have an expiration date at least one year out. **Vice Chairman Broadsword** asked if a provider has a practice of setting an expiration date of two years, whether there is anything in this rule that would prohibit them from doing so? **Mr. Hales** advised that under this rule a prescription could be issued for two years.

**Vice Chairman Broadsword** recognized **Larry Benton**, representing the Idaho Optometric Association (IOA), who indicated the IOA **supports** Docket 24-1001-0901.

**MOTION**

**Senator Coiner** moved, seconded by **Senator McGee**, that the Committee adopt Docket 24-1001-0901. The motion carried by **voice vote**.

**24-1101-0901**

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

**Mr. Hales** presented Docket 24-1101-0901 on behalf of the State Board of Podiatry. He stated that the rule updates the contact information for the Board of Podiatry as it has changed. It further updates the American Podiatric Medical Association's Code of Ethics referenced in Section 500 to reflect the current edition, and clarifies the licensure by endorsement requirements for the residency programs and disciplinary action. He advised that endorsement deals with an individual licensed in another state who wants to practice in Idaho. The rules require proof of completion of a residency for endorsement, but this requirement is waived for those who graduated prior to 1993, as completion of a residency was not a requirement for licensure prior to that date.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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, seconded by **Chairman Lodge**, that the Committee adopt Docket 24-1101-0901. The motion carried by **voice vote**.

**24-1201-0901**

Relating to Rules of the State Board of Psychologist Examiners (Pending Fee).

**Mr. Hales** presented Docket 24-1201-0901 on behalf of the State Board of Psychologist Examiners. He stated that this rule creates an inactive status as allowed by **HB 45** which was passed by the 2009 Legislature. These rules establish that program and set reduced fees associated with the inactive status versus active status. He advised that the annual renewal for an inactive license is \$150 as opposed to \$300 for an active

license. He also stated that the rule adds an application fee of \$300 for endorsement of a Senior Psychologist, and sets a reinstatement fee for a licensee who has allowed his license to expire, together with requirements for continuing education that must be met for reinstatement. The rule further establishes and clarifies the Board's ability to require a licensee complete a rehabilitation program as part of discipline for a violation which will assist the Board in protecting the public. It will also allow the Board to waive a licensee's continuing education in a hardship circumstance. Finally, these rules will allow additional activities to qualify for a licensee's continuing education, and clarify the continuing education requirements.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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, seconded by **Senator Smyser**, that the Committee adopt Docket 24-1201-0901. The motion carried by **voice vote**.

**24-1201-0902**

Relating to the State Board of Psychologist Examiners (Pending).

**Mr. Hales** presented Docket 24-1201-0902 on behalf of the State Board of Psychologist Examiners. He stated that **HB 45** also clarified the experience required for a psychology license to allow credit for an internship. This rule is being changed to be consistent with that law. The rules allow for an additional path for licensure of out-of-state psychologists through endorsement, and establish a temporary license to allow out-of-state psychologists to practice in Idaho to benefit the public in an emergency or special circumstance.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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 LeFavour** moved, seconded by **Senator McGee**, that the Committee adopt Docket 24-1201-0902. The motion carried by **voice vote**.

**24-1501-0901**

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

**Mr. Hales** presented Docket 24-1501-0901 on behalf of the Board of Professional Counselors and Marriage and Family Therapists. He stated that in addition to revising contact information for the Board, the proposed rule clarifies the content of the graduate program to ensure competency. It allows for supervision to be provided by a counselor education faculty

member for the benefit of a student, and it clarifies interns. For the benefit of out-of-state applicants, it provides that out-of-state supervised experience does not need to be provided by a registered supervisor. It deletes reference to professional counselor as it relates to administration fees for examination, as fees are paid to the test administrator. To ensure competency, it clarifies endorsement for applicants from a foreign country. To protect the public, it updates language for various methods of meeting the requirements, thus providing a licensee more flexibility to meet the requirements. The rule further clarifies what constitutes a contact hour of continuing education, and specifies what kinds of continuing education qualify.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Senator LeFavour** asked if there is any ratio requirement for supervision? **Mr. Hales** deferred the question to **Roberta Crockett**, Vice Chairman of the Board, who advised that there are ratios of supervision depending on the level of accomplishment of the particular licensee. In graduate school the ratio is one hour of supervision for every ten hours of practice. In the first 1,000 hours after a degree is obtained, the supervision ratio is one to twenty, and for those who are working on the highest level of licensure, either as clinical professional counselors or as marriage and family therapists, that ratio is one to thirty.

#### MOTION

**Senator Coiner** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 24-1501-0901. The motion carried by **voice vote**.

#### 24-1601-0901

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

**Mr. Hales** presented Docket 24-1601-0901 on behalf of the State Board of Dentistry. He stated that this rule changes the contact information for the Board. To protect the public, the rule clarifies that the supervising denturist or dentist must be present and directly observe any intern interaction with a patient.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Senator Darrington** asked if the Board is now constituted with enough members for it to be a viable board according to the fee arrangement? **Mr. Hales** advised that there are currently 55 licensees under the Board and they presently have a negative cash balance. A fee increase was



approved last year and it is the hope that will cure the negative balance.

**Vice Chairman Broadsword** asked if the Board would plan to merge with another board if the fee increase does not cure their cash flow problem?

**Mr. Hales** responded that if the current plan in place does not eliminate the deficient balance, the Board would consider a number of options, including merging with another board.

**MOTION**

**Senator Coiner** moved, seconded by **Senator Darrington**, that the Committee adopt Docket 24-1601-0901. The motion carried by **voice vote**.

**24-1701-0901**

Relating to the Rules of the State Board of Acupuncture (Pending Fee).

**Mr. Hales** presented Docket 24-1701-0901 on behalf of the State Board of Acupuncture. He advised that this rule proposes a decrease in annual license fees for Acupuncturists from \$200 to \$125.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** asked if the Board had a sufficient cash balance to take care of any disciplinary hearings that might be necessary? **Mr. Hales** advised that there are currently 176 licensees, and the Board had a cash balance on December 10, 2009, of \$125,000. This rule would reduce the Board's annual funding by approximately \$13,000.

**MOTION**

**Senator Smyser** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 24-1701-0901. The motion carried by **voice vote**.

**24-1901-0901**

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

**Mr. Hales** presented Docket 24-1901-0901 on behalf of the Board of Examiners of Residential Care Facility Administrators. He advised that this rule changes the contact information for the Board. It additionally allows for termination of inactive applications upon notification to the applicant in an effort to ensure files are current. It clarifies the qualifications for applicants licensed as nursing home administrators to ensure they are competent to run a residential care facility. It corrects a typographical error in Section 400, and adds a special exemption from continuing education requirements to allow the Board to consider a hardship.

**Mr. Hales** requested that the Committee approve this Docket as presented.

Supporting documents related to this testimony have been archived and

can be accessed in the office of the Committee Secretary (see Attachment 11).

**MOTION**

**Chairman Lodge** moved, seconded by **Senator McGee**, that the Committee adopt Docket 24-1901-0901. The motion carried by **voice vote**.

**24-2301-0901**

Relating to the Rules of the Idaho Board of Speech and Hearing Services (Pending Fee).

**Mr. Hales** presented Docket 24-2301-0901 on behalf of the Idaho Board of Speech and Hearing Services. He advised that this rule changes the contact information for the Board. It further establishes the endorsement fee the same as the original license fee. The rule increases the renewal fee from \$100 to \$125, and clarifies that exam fees for unexcused applicants are non-refundable. To ensure competency, it clarifies the need for continuing education when reinstating a license. The rule adds provisions to carry over continuing education, and includes a special exemption for continuing education for the benefit of licensees. It clarifies when a provisional permit can be issued and how many permit holders can be supervised at a time. It also clarifies what records must be maintained by the supervisor of a hearing aid dealer and fitter. It clarifies the quarterly report for audiology and hearing aid dealer and fitter and what needs to be included. **Mr. Hales** advised that this Board currently has a \$40,000 deficit balance, \$30,000 of which was inherited when the Hearing Aid Dealers and Fitters Board was combined with the Speech Therapy Board in 2006, and this fee increase is needed to eliminate the deficit balance. He estimated this increase could have a positive impact of approximately \$15,625 annually based on the current 625 licensees.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** noted that the original license fee is lower than the renewal and asked why that is, and if there are plans to increase the original license fee? **Mr. Hales** responded that he could not explain that difference, but it is his impression that the renewal fees are really what generate the revenue. **Vice Chairman Broadsword** expressed concern that this increase may not be enough to eliminate the deficit balance. She invited **Dr. Joe Seitz**, Chairman of the Speech and Hearing Services Board, to respond to her concern. **Mr. Seitz** advised that this is a growing board, particularly in the speech and language area. He feels the Board can expect continued revenue from those new applicants. **Vice Chairman Broadsword** noted that the Board is currently defending a pending court case and questioned whether \$15,000 annually was going to be enough to overcome the deficit? **Mr. Seitz** advised that the court case has now been resolved with the Supreme Court upholding the

previous ruling in favor of the Board.

**Senator Coiner** asked if there is a potential of recovering court fees and costs from the lawsuit? **Mr. Seitz** indicated he would be surprised if those fees could be recovered from the individual. **Senator Coiner** asked if the Board is required to pay interest on the deficit balance? **Vice Chairman Broadsword** invited **Tana Cory**, Bureau Chief, Bureau of Occupational Licenses, to respond to the question. **Ms. Cory** advised that the Bureau gets one appropriation, and that interest from the Bureau's fund balance goes to the general fund. She stated that the Bureau internally tracks each of the Board's budgets, to try to provide some stability in license fees.

## MOTION

**Senator Coiner** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 24-2301-0901. The motion carried by **voice vote**.

## 24-2601-0901

Relating to the Rules of the Idaho State Board of Midwifery (Pending Fee).

**Mr. Hales** presented Docket 24-2601-0901 on behalf of the Idaho State Board of Midwifery. He introduced members of the Board in the audience and stated that the 2009 Legislature passed **HB 185** which created the State Board of Midwifery. These proposed rules implement **HB 185**. He advised that a significant amount of time was spent with the Executive Director of the Board of Pharmacy as the rules relate to pharmacy, and that these rules have the support of the Board of Pharmacy as they relate to the drugs identified. The Idaho Medical Association has also reviewed these rules and does not oppose them.

**Mr. Hales** noted that the rules were drafted by the Deputy Attorney General, are aligned with the statute, and contain sections regarding: contact information; definitions; organization of the Board; qualifications for licensure; fee schedule for applications, licenses and license renewal; reporting requirements for license renewal; continuing education requirements; clarification of informed consent requirements of licensee to patient; adoption of formulary schedule of drugs that may be used by licensees; regulations on drug storage and maintenance; and regulations regarding disposal of medical waste. They also set forth scope and practice standards including: conditions for which a licensed Midwife may not provide care; conditions for which a licensed Midwife may not provide care without Physician involvement; conditions for which a licensed Midwife must recommend Physician involvement; and conditions for which a licensed Midwife must facilitate hospital transfer. The rules also set forth grounds for discipline.

**Mr. Hales** requested that the Committee approve this Docket as presented.

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

**Senator Darrington** inquired whether anything in these rules violates in any way the statute as now constituted? **Mr. Hales** advised that he did not draft the rules, but is confident based upon the work that was involved, the number of people involved in monitoring the various interests, and the competency of the Deputy Attorney General who drafted the rules that they do not in any way violate the statute. **Senator Darrington** commented that he is aware of a movement with regard to dissatisfaction by Midwives with the statute, but the responsibility of the licensing board at this time is to draft rules according to the statute.

**Vice Chairman Broadsword** recognized **Barbara Rawlings**, Chairman of the Idaho State Board of Midwifery, who advised that the Board members are very pleased with the way the Board worked on this process, the number of people involved, and the timeliness of being able to bring rules before the Committee.

#### MOTION

**Senator LeFavour** moved, seconded by **Senator Darrington** that the Committee adopt Docket 24-2601-0901. The motion carried by **voice vote**.

**Senator Darrington** complimented **Mr. Hales** on his diligence in presenting a number of occupational licensing issues today, noting that these rules are important to the people of the State of Idaho. He asked if **Mr. Hales** is aware of any attempt by the licensure Boards to amend rules to limit those who may be able to enter a profession that do not involve health and safety. He referenced instances in the past and expressed hope that **Mr. Hales** would advise the Committee should that occur. **Mr. Hales** responded that he has appeared before the Committee for more than ten years and is very well aware of this concern. He stated that in acting as legal counsel to the various boards he has always made it crystal clear that they needed to be very careful about any rule that in any way seemed to try to prevent people from coming into this State to practice when they have a license outside the State. He believes the current boards are very well aware of the Committee's, the Senate's, and the Legislature's concern about trying to set up barriers to licensees to practice in this State. He advised that he has not seen that movement for a long time, and would be very surprised to see any rules attempt to do that.

#### ADJOURNMENT

**Vice Chairman Broadsword** thanked **Mr. Hales** for his presentations, and returned the gavel to **Chairman Lodge**.

**Senator McGee** complimented the leadership of **Chairman Lodge** and **Vice Chairman Broadsword** in efficiently handling very difficult issues.

**Senator Darrington** stated his agreement with **Senator McGee's** comments. He noted that difficult battles in this area have been fought in the past, and that the scope of practice through those battles has finally been agreed to and to some extent well accepted.

**Chairman Lodge** added that the people who come before the Committee from these boards have drafted the rules in good faith and make this

process easier.

**Senator Coiner** commented that he feels the experience of the Committee and the wise counsel of **Senator Darrington**, who has served the Committee for many years, has lead to an efficient group. He stated that the Committee has learned its lesson regarding taking some things at face value, and is now insistent that the statute set out regulations very clearly. He commended the Boards for following the statute because that makes the process easier.

There being no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 4:26 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 26, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

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

**MEMBERS ABSENT/ EXCUSED:**

**NOTE:** The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED** **Vice Chairman Broadsword** announced that **Chairman Lodge** had been delayed and asked that she convene the meeting. She called the meeting to order at 3:00 p.m.

**PRESENTATION** **Vice Chairman Broadsword** welcomed **Kathie Garrett**, who gave a presentation on behalf of the Idaho Council on Suicide Prevention (ICSP). She provided the Committee with a copy of ICSP's November 2009 Report to Governor Otter, which was produced and printed by volunteers. ICSP was created by the Governor's Executive Order and receives no state funding. She advised that ICSP is fortunate to have some of the top experts on suicide prevention on its Council, and introduced council member Kate Pape from the Ada County Sheriff's Office. She stated that the focus of the report is reaching out in times of crisis, and advised that pages 22 through 25 contain information on individual counties and districts.

**Ms. Garrett** noted that the Governor opened his State of the State address with, "Thank you to everyone who held your family and friends close in their struggles. Thank you to everyone who reached out to neighbors and even complete strangers to assure them that we are in it together, to offer comfort and hope that things will get better." She commented that this is particularly applicable to what we are facing in the current economic crisis. Increasing unemployment, financial strain and home foreclosures all are factors that have been shown to be associated with an increased risk of suicide. Idaho experienced a 14% increase in deaths by suicide during 2008, for an average of one death every 35 hours.

**Ms. Garrett** advised that Idaho is the only state in the nation that does not have a crisis hotline. Idaho's calls go directly to the National Crisis Hotline, and currently Oregon is responding to our calls. Idaho calls to the

National Crisis Hotline are reaching epidemic proportions; 2,491 Idaho citizens called the hotline from January through August 2009. She advised that lives could be saved through better awareness, education and other preventive activities. This effort needs to extend throughout the communities of the State. Since there is not one State agency that has in their mission suicide prevention, ICSP has become the coordinating body and identified over fifty stakeholders who can be part of the suicide prevention network, working together to help reduce the tragedy of suicide during these tough economic times.

**Ms. Garrett** reviewed the objectives ICSP is currently working on, and recognized **Senator Smyser** for her work with young people through the Safe and Drug Free Schools program. She offered to meet individually with any Committee member who might want to address any specific issue regarding the work of ICSP.

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

**Senator Broadsword** thanked **Ms. Garrett** for her presentation and her efforts to build awareness on this important issue.

#### **RULES:**

##### **22-0101-0901**

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, Idaho Board of Medicine, presented Docket 22-0101-0901. She stated that this rule change allows the Board to share investigative material with other medical regulatory facilities. This will increase the capacity to restrict the ability of incompetent practitioners to move from state to state without disclosure or discovery of previous damaging or incompetent performance. The rule further eliminates the need to file multiple copies of rulemaking and contested case proceedings with the Board.

**Ms. Kerr** requested that the Committee approve the Docket as presented.

#### **MOTION**

**Senator Coiner** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 22-0101-0901. The motion carried by **voice vote**.

##### **23-0101-0901**

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

**Sandra Evans**, Executive Director, Idaho Board of Nursing, presented Docket 23-0101-0901. She advised that these rules relate to Idaho's participation in the Nurse Multistate Licensing Compact, an agreement between 24 member states that allows for ease of nursing practice across state borders. The changes revise existing rules addressing definitions, methods of validating an applicant's declared state of primary residence, and clarify procedures and circumstances for issuance of a "single state

license.”

**Ms. Evans** requested that the Committee approve the Docket as presented.

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

**Senator Bock** questioned language on page 342, para (c), asking if the word “not” should be inserted after the word “may” in line 2 of that paragraph? **Ms. Evans** advised that the wording is correct, stating that the intent is that an individual state may select to issue a license to a nurse whose license was revoked in another state. However, the state choosing to issue the license would mark the license as “single state license, valid only in the state of issuance.” She stated this might happen where laws leading to revocation in one state might not apply to the state wishing to issue the single state license. As an example, she advised that Idaho law requires suspension or revocation for failure to pay child support. That provision of suspension in Idaho may not carry forth for instance in Utah, and Utah might choose to issue a license to that same applicant, but would mark it “Single State License” so that the licensee could not then return to Idaho with a privilege to practice. **Senator Bock** indicated his satisfaction with the explanation.

**Senator Darrington** remarked that he is pleased Idaho is a member of the Nurse Multistate Licensing Compact and asked if most states are members? **Ms. Evans** advised that there are currently 24 member states and there are several other states contemplating adoption.

#### MOTION

**Senator Smyser** moved, seconded by **Senator McGee**, that the Committee adopt Docket 23-0101-0901. The motion carried by **voice vote**.

#### 19-0101-0901

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

**Arthur Sacks**, Executive Director, Idaho Board of Dentistry, presented Docket 19-0101-0901. He stated that the rule changes provide for licensure of dental specialists by making the rule more inclusive. It defines the procedures necessary for specialty examinations for licensure. The rule change provides that not more than eight of the required continuing education credits for license renewals for dentists be from self-study, and six of the required continuing education credits for license renewals for dental hygienists be from self-study. It further provides that a dentist may use other anesthesia personnel (such as certified nurse anesthetists) during procedures, as long as the dentist has the same personnel and equipment of a facility for the same level of sedation.

**Ms. Sacks** requested that the Committee approve the Docket as presented.



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

**Senator Hammond** asked for further explanation regarding the continuing education credit for self-study and how it is validated. **Mr. Sacks** stated that the Board does not validate except on a random audit. At biennial licensing applicants must list the courses taken, dates, the subject of the courses, and what they did. Periodically if something is flagged there will be an audit and at that time the licensees must submit a certification of the actual courses they take. **Senator Hammond** asked how many credits are required to renew a license? **Mr. Sack** advised dentists are required to have 30 hours of continuing education credits in the biennial period, and dental hygienists are required to have 24 hours. **Senator Hammond** inquired whether it is a common practice to allow so many of these hours in self study? **Mr. Sack** advised that the current law allows everything to be self study, and self study was interpreted by the Board even as reading a magazine article, or on line research, as long as it is oral health related. The Board felt after discussions with the various associations that the current practice was not protecting the citizens of Idaho and those discussions led to this rule change.

**Senator Darrington** questioned the practice of allowing one credit hour of continuing education for every two hours of volunteer dental practice, stating that volunteer dentistry does nothing for continuing education. **Mr. Sack** stated that analysis is probably correct, but this is an area the Board decided not to change to encourage community volunteer service.

#### MOTION

**Senator Bock** moved, seconded by **Senator McGee** that the Committee adopt Docket 19-0101-0901. The motion carried by **voice vote**.

**Senator Broadsword** noted a supplemental appropriation had been requested by the Board for costs associated with a disciplinary issue, and asked if that request would be sufficient to handle the issue or the Board would have a need for further funds? **Mr. Sack** advised that the Board is holding hearings that should be completed this fiscal year and do not anticipate an ongoing need.

#### 58-0105-0901

Relating to Rules and Standards for Hazardous Waste (Pending).

**Orville Green**, Waste Management and Remediation Division Administrator, Department of Environmental Quality (DEQ), presented Docket 58-0105-0901. He stated that this rule change simply adopts by reference the Federal Hazardous Waste Regulations by striking out July 1, 2008 and inserting July 1, 2009. He stated that DEQ reviews rules on an annual basis to satisfy consistency and stringency requirements of the Idaho Hazardous Waste Management Act.

**Mr. Green** requested that the Committee approve this Docket as presented.

Supporting documents related to this testimony have been archived and

can be accessed in the office of the Committee Secretary (see Attachment 4).

**Senator Bock** indicated that it is his understanding from looking at the text of the rule that the federal regulations apply regardless of whether or not this language is changed, and inquired why the statute isn't worded so that we do not have to address this issue every year? **Mr. Green** stated that he is correct, and the primary purpose in adopting the federal rules is that we do so instead of EPA doing it. He further stated that it is his understanding that we do not adopt statutes that would impose restrictions on future legislatures. If the specific federal rule is not identified, there would be no review of those rules, and we would be giving blanket approval for things that one day we may not want to approve. He noted that in this case the DEQ did find one section they might want to exempt, so it is worthwhile to look these rules over and make sure we are not adopting something that may have long term adverse effects here in Idaho. **Senator Bock** pointed out that it just seems we are spending time on something we have no control over.

#### MOTION

**Senator LeFavour** moved, seconded by **Senator McGee**, that the Committee adopt Docket 58-0105-0901. The motion carried by **voice vote**.

**58-0102-0801**

Relating to Water Quality Standards (Pending).

**Barry Burnell**, Water Quality Division Administrator, Idaho DEQ, presented Docket 58-0102-0801. He advised that this rulemaking is in response to a third party notice of intent to sue EPA and to forestall EPA from adopting surface water quality standards for the State of Idaho. This rulemaking addresses items in the notice of intent to sue, by proposing to adopt a low end hardness cap for cadmium criteria and to update Idaho's criteria for arsenic. He stated that in discussions with EPA, DEQ agreed to propose reducing the hardness cap from 25 mg/L to 10 mg/L for cadmium and reducing the arsenic criteria from 50 ug/L to 10 ug/L. If Idaho acts it will avoid EPA promulgation of federal rules for Idaho on these criteria. EPA's recommended standard for the hardness cap is zero and for arsenic is 0.14 ug/L for aquatic life and 0.018 ug/L for human health.

**Mr. Burnell** requested that the Committee approve this Docket as presented.

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

**Senator Broadsword** indicated there are several areas in her district that are not going to be able to meet the hardness cap of 10 mg/L, and asked if there is a plan in place to help those areas? **Mr. Burness** advised that the South Fork of the Coeur d'Alene has a site specific standard for metals, and currently all the dischargers there either meet that standard or have been issued variances. **Senator Broadsword** asked if there is a

waiver or something in place allowing a variance so that if they cannot meet that criteria they can continue to operate? **Mr. Burnell** stated there is a variance process, and that Page, Mullen and Smeltonville have had a variance that was issued by EPA five years ago. DEQ reissued that variance just this year, and their MPS discharge permits will meet the criteria in the proposed rule as a result of having that variance. He stated that the issue with those areas is that they are highly mineralized areas, their collection systems are in disrepair, and the ground water that seeps into the wastewater treatment collection lines has metals associated with it. The plan is to correct those collection systems with inflow and infiltration problems, and then over the course of the next one or two permit cycles those facilities will achieve the required standards.

**MOTION**

**Senator LeFavour** moved, seconded by **Senator McGee**, that the Committee adopt Docket 58-0102-0801. The motion carried by **voice vote**, with **Senator Hammond** voting "Nay."

**GAVEL CHANGE**

**Vice Chairman Broadword** passed the gavel to **Chairman Lodge** and excused herself to attend a conference call.

**58-0116-0802**

Relating to Wastewater Rules (Pending).

**Mr. Burnell** presented Docket 58-0116-0802. He advised that this rulemaking is a result of discussions held by the Drinking Water and Wastewater Operator Board in conjunction with Idaho Rural Water Association. Those discussions focused on defining the minimum operator licensure requirements. One aspect considered was the lack of a very small wastewater system classification in DEQ's rules. This proposed rule establishes a new very small wastewater system classification, and will reduce the cost to small communities with 500 or fewer connections. The benefit of this type of license is that an operator of a very small drinking water system only needs one license. The purpose of this rule is to assist small wastewater systems in achieving compliance with the wastewater requirements and the associated operator licensing.

**Mr. Burnell** requested that the Committee approve this Docket as presented.

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

**Senator McGee** asked if this rule affects the Greenleaf community situation? **Mr. Burnell** advised that Greenleaf's current system is a 29-user system so it certainly would qualify, and if things go as we expect their new wastewater system would also qualify.

**Senator Hammond** asked if this is just a classification and this rule does not outline what license the operator must have? **Mr. Burnell** responded that is correct, this rule identifies a new classification of wastewater systems. **Senator Hammond** asked if there would be future rules that classifies what license will be required? **Mr. Burnell** advised that the corresponding license is outlined in the Bureau of Occupational Licenses

where there is a corresponding very small wastewater system license in that rule. He further stated that the classification system identifies a point based system for the collection portion of a system, and then a point based system for treatment. The more miles of sewer a system has, the more lift stations, and the more complexity in the collection system give more points. The higher the points, the higher the classification of the system.

**Senator LeFavour** noted that it was her recollection that licenses are specific to the water treatment system itself, and therefore individuals assuming the license do not have to learn the intricacies of larger systems than their own. **Mr. Burnell** advised that the Bureau of Occupational Licenses rule for waste water operators adds a new license category under a restricted license mode, and that restricted license allows for an individual to be licensed for that particular facility under certain education and hours of experience conditions. **Senator Darrington** asked if there is not a federal minimum standard for operators in the waste water area. **Mr. Burnell** responded that there is not. When the operator licensure was voluntary, there was a voluntary board who conducted business so they could be licensed. Several years back that system changed, partially because the Safe Drinking Water Act required that drinking water operators be licensed, so it was felt we should license waste water operators.

**MOTION**

**Senator LeFavour** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 58-0116-0802. The motion carried by **voice vote**.

**58-0120-0901**

Relating to Rules for Administration of Drinking Water Loan Program (Temporary Fee).

**Mr. Burnell** presented Docket 58-0120-0901. He stated that drinking water planning grants are dependant upon the State general funds for financial support. The fiscal year 2010 holdbacks resulted in DEQ staff identifying an alternative approach to funding drinking water planning grants. The drinking water loan fee would operate similarly to the wastewater loan fee, in that the loan interest rate is reduced to offset the loan fee, resulting in no cost to the community. This will replace a \$250,000 general fund budget item, and allows public drinking water systems to lay the groundwork for needed infrastructure repair, replacements and improvements through the drinking water planning grant program.

**Mr. Burnell** requested that the Committee approve this Docket as presented.

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

**Senator Darrington** asked if the source of funding for the drinking water planning grants is the water pollution control account on which the

Committee spent hours of time about twenty years ago, and is this now folded into that program which became the revolving loan program? **Mr. Burnell** responded that the water pollution control account has been the funding source for the drinking water and the waste water facility planning grant program. Through the Drinking Water Loan Fee Rule and the Waste Water Loan Fee Rule enacted three years ago, the costs have been offset by using those fees to pay for the planning grants.

**MOTION**

**Senator Coiner** moved, seconded by **Senator McGee**, that the Committee adopt Docket 58-0120-0901. The motion carried by **voice vote**.

**58-0101-0702**

Relating to Rules for the Control of Air Pollution in Idaho (Pending).

**Martin Bauer**, Executive Director, DEQ, presented Docket 58-0101-0702. He stated that the Treasure Valley Air Quality Council (TVAQC) developed a plan for the Treasure Valley that was accepted by the Idaho Legislature that requires the DEQ to develop a rule for Stage 1 vapor collection in Ada and Canyon counties. He advised that installation and operation of Stage 1 vapor collection equipment will reduce volatile organic compound emissions by over 1,000 tons per year. The rule requires that new underground gasoline storage tanks that are greater than 10,000 gallons constructed after April 1, 2009 must have Stage 1 vapor collection designed into the system. Existing sources have until May 1, 2010 to install collection systems. DEQ is trying to speed the installation by supplying grant funds for 50% of the installation up to a maximum of \$2,500. DEQ has retrofitted 53 tanks in the Treasure Valley, has 24 tanks that are still in the system, and has spent an average of \$1,000 per tank.

**Mr. Bauer** requested that the Committee approve this Docket as presented.

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

**Chairman Lodge** asked how many of the 24 tanks still in the system are in Canyon County? **Mr. Bauer** indicated he did not have that information with him but would get it for the Committee.

**TESTIMONY**

**Charles A. Johnson**, a resident of Nampa, Idaho, spoke in **opposition** to Docket 58-0101-0702. He disputed that the Legislature accepted the TVAQC's Plan for the Treasure Valley, and stated that DEQ does not have the authority to regulate Stage 1 vapor collection equipment.

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 LeFavour** moved, seconded by **Senator Coiner**, that the

Committee adopt Docket 58-0101-0702. The motion carried by **voice vote**.

**58-0101-0901**

Relating to Rules for the Control of Air Pollution in Idaho (Pending).

**Mr. Bauer** presented Docket 58-0101-0901. He stated that the purpose of this rule is to implement *Idaho Code* 39-116B, which requires DEQ to enter into rulemaking to establish the minimum requirements for a vehicle emissions testing program when ambient air quality concentrations are at or above 85% of a national ambient air quality standard and motor vehicle emissions constitute one of the two top contributing sources to the concentrations. These minimum requirements will assist affected local entities in determining whether to (1) enter into a joint exercise of powers agreement to implement the vehicle emissions testing program, or (2) establish an alternative program in lieu of vehicle emissions testing. If local entities do not choose either one of the two options, DEQ must implement the vehicle emissions program. The rule also outlines requirements for licensing authorized inspection and maintenance stations and technicians, inspection frequency, procedure requirements, standards, equipment, fees, public outreach, and waivers. **Mr. Bauer** advised that vehicles exempt from testing include: electric or hybrid vehicles, vehicles less than five years old, vehicles older than 1981, classic cars, vehicles less than 1500 pounds, motor homes, farm equipment, and vehicles used solely in the business of agriculture.

**Mr. Bauer** requested that the Committee approve this Docket as presented.

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

**GAVEL CHANGE**

**Vice Chairman Broadsword** returned to the meeting and **Chairman Lodge** returned the gavel to her.

**Vice Chairman Broadsword** inquired regarding the nature of public comments received on this rule. **Mr. Bauer** advised that during the comment period all comments were in support of the rule, but there was some opposition testimony before the Board.

**Senator Hammond** asked if there are any statistics from previous efforts in Ada County that show a decline in ozone through the emissions program? **Mr. Bauer** responded that there is no exact data on ozone, but EPA has shown that vehicle emissions testing does decrease the ozone in the air. He added that the original vehicle emissions testing program was actually put in place for carbon monoxide. This rule would actually be for an ozone issue, and that information will be available as we move forward.

**TESTIMONY**

**Allen Freeman**, Nampa, Idaho, spoke in **opposition** to Docket 58-0101-0901. He stated he has followed all the studies regarding vehicle emission testing since 2002, has reviewed all the data issued on this subject, and is concerned that the data being used to support this

proposed rule is inaccurate, incomplete, and out-of-date. He believes there is no legal basis for forcing Canyon County to implement vehicle emission testing.

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

#### TESTIMONY

**Charles Johnson**, Nampa, Idaho, spoke in **opposition** to Docket 58-0101-0901. He stated that Canyon County is in attainment with air quality standards and requested the Committee reject this rule.

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

**Senator Darrington** noted that the tenor of the previous testimony on this docket is that the rules are not developed according to law. He stated that in his experience the employees hired in the Legislative Services Office to review all proposed legislation determine whether the rules are developed according to law. Should they have any question, they go back to the promulgating agency, and request changes before the rules are published. He inquired of Committee members who may have sat on the rules review subcommittee if there was any indication at that time by Legislative Services that this rule was not promulgated according to law? **Senator Broadsword** advised that she is a member of that subcommittee and there was no indication of any concern from Legislative Services, the House, or the Senate regarding this rule and no hearings were held.

#### TESTIMONY

**Roy Eiguren**, Attorney, representing Amalgamated Sugar Company, spoke in **support** of Docket 58-0101-0901. He stated that Amalgamated Sugar Company has facilities in or near Nampa, is one of the largest employers in the county, and one of the largest taxpayers in the county. He stated that facilities such as Amalgamated Sugar are part of the pollution base that contributes to ozone, but that percentage is about 3%, while a little over 60% of pollution comes from vehicle emissions, and those vehicle owners should share in the cost of pollution control. **Mr. Eiguren** advised that he participated in this rulemaking and assured the Committee that the rule before it does in fact meet legislative intent, and is consistent with the law as passed. **Vice Chairman Broadsword** asked if this rule and the one proceeding are not passed, would EPA come in and assume primacy, then adopt a rule that could be much harsher and possibly prevent any new construction from taking place? **Mr. Eiguren** responded, "That is correct." **Chairman Lodge** inquired if there are statistics on how much pollution comes from vehicles on the freeway that runs through the valley close to Amalgamated Sugar Company? **Mr. Eiguren** indicated COMPASS estimated approximately 60% from vehicles on roads throughout the area, but there are no statistics to his knowledge limiting figures to vehicles on the freeway. **Chairman Lodge** noted her concern is those interstate vehicles that go beyond Canyon County but also use that freeway.

## TESTIMONY

**Alan Prouty**, Vice President Environmental and Regulatory Affairs, J.R. Simplot Company, and member of Treasure Valley Air Quality Council spoke **in support** of Docket 58-0101-0901. He stated that it is the belief of J.R. Simplot Company that this rule is good for business in Treasure Valley, and the vehicle emission testing program is necessary in Canyon County to keep the area in attainment for ozone.

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

**Mr. Bauer** advised that if this rule is put in place now, before we fall into nonattainment, we are proactive in trying to keep the area from going into nonattainment, and would have some negotiating room with EPA should we eventually fall into nonattainment. If we do nothing and fall into nonattainment, EPA may come in and they could then establish rules that could be much harsher than this rule.

**Senator Darrington** noted that previous testimony seemed to indicate that we are not in nonattainment and asked how **Mr. Bauer** arrived at the conclusion that we could fall into nonattainment? **Mr. Bauer** stated that the Treasure Valley's number is right at the current EPA standard, and in good weather years it can fall below the standard. However, EPA has proposed lowering the standard, and if that is approved, the area would fall into nonattainment. It will take two to three years for that approval process and this rule could help us try to get below the standard. **Senator Darrington** asked how the weather history pattern affects the readings? **Mr. Bauer** indicated that weather is only a part of the puzzle. Another factor is high cost of gasoline. He stated that by looking at the various factors you can arrive at a reasonable calculation for a normal year.

## MOTION

**Senator LeFavour** moved, seconded by **Senator Coiner**, that the Committee adopt Docket 58-0101-0901.

**Chairman Lodge** stated that the rule does meet the legislative intent and thanked those involved for their work. She advised that she debated against the bill on the floor because her district has clean air, and her constituents are very much against vehicle emission testing. She stated she does understand the importance of economic growth, but feels some exemptions in this rule might not be fair to everyone.

The motion carried by **voice vote**, with **Chairman Lodge**, **Senator McGee**, and **Senator Smyser** voting "Nay."

## 58-0101-0902

Relating to Rules for the Control of Air Pollution in Idaho (Pending).

**Mr. Bauer** presented Docket 58-0101-0902. He stated that the revisions included in this proposed rule allow for higher sulfur content fuels to be used in fuel burning equipment in Idaho as long as the resulting emissions are at levels equal to or lower than those provided for in the existing rule. He advised that this rule is necessary to allow industries



flexibility to use less expensive alternative fuels with higher sulfur content with no additional environmental impact.

**Mr. Bauer** requested that the Committee approve this Docket as presented.

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

**Senator LeFavour** asked what kind of fuels are included in this rule? **Mr. Bauer** advised that the rule outlines sulfur contents for coal, diesel fuels, and different types of liquid fuels. **Senator LeFavour** asked if this rule would impact coal gasification plants? **Mr. Bauer** advised that it does have the ability to impact coal gasification plants in that they extract the sulfur and could be looking for very high sulfur coals. However, they will have to prove that by using the higher sulfur coal they will not impact any more than they would if they were using lower sulfur coal. **Vice Chairman Broadsword** asked if that falls under the exemption on page 448, giving the Department flexibility to approve an exemption? **Mr. Bauer** advised it did. **Senator LeFavour** asked if this type of exemption appears anywhere else that might affect the pollutants that come from transporting the dust of a high sulfur product? **Mr. Bauer** advised that all other existing rules must be met, and that this change merely affects the combustion of that fuel.

**MOTION**

**Senator Hammond** moved, seconded by **Senator Bock**, that the Committee adopt Docket 58-0101-0902. The motion passed by **voice vote**.

**58-0101-0903**

Relating to Rules for the Control of Air Pollution in Idaho (Pending).

**Mr. Bauer** presented Docket 58-0101-0903. He stated that this rulemaking is necessary to ensure that the Rules for the Control of Air Pollution remain consistent with federal regulations. The proposed rule updates citations to federal regulations incorporated by reference at Sections 008 and 107 to include those revised as of July 1, 2009.

**Mr. Bauer** requested that the Committee approve this Docket as presented.

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

**MOTION**

**Senator Coiner** moved, seconded by **Senator Darrington**, that the Committee adopt Docket 58-0101-0903. The motion carried by **voice vote**.

**ADJOURNMENT**

**Vice Chairman Broadsword** concluded the rules review and returned the gavel to **Chairman Lodge**. There being no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 5:09 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 27, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

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

**MINUTES:** **Vice Chairman Broadsword** moved, seconded by **Senator Darrington**, that the Committee accept the January 18, 2010 minutes as written. The motion carried by **voice vote**.

**RS19230** Relating to Pharmaceuticals.

**Russell Duke**, Director, Central District Health Department, representing all seven Districts, presented RS19230. He stated that this legislation amends Idaho pharmacy law regarding unlawful practice. The amendment will make it legal for public health district nurses licensed by the State of Idaho to label and deliver refills of certain prepackaged medications for preventive health services. The medications are prescribed by a clinician with prescribing authority, however, prescribing staff are not always available to label and deliver the medication to public health district clients. This code amendment will eliminate a cumbersome and expensive process of having clinician level staff travel to rural district offices for the purpose of labeling and delivering the medications when this step could be safely accomplished by licensed nurses. He advised that an independent review has estimated this statute change will save the public health districts, and therefore the taxpayers, between \$65,000 and \$100,000 per year.

**Mr. Duke** requested that the Committee send RS19230 to print.

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

**SdMOTION** **Senator Hammond** moved, seconded by **Senator Darrington**, that the Committee send RS19230 to print. The motion carried by **voice vote**.

**CHANGE OF GAVEL** **Chairman Lodge** passed the gavel to **Vice Chairman Broadsword** to continue rules review for the Department of Health and Welfare.

**RULES:**

**41-0402-0901** Relating to Rules for Community Subsurface Sewage Disposal Systems (Pending).

**41-0403-0901** Relating to Rules for On-Site Sewage Treatment Systems (Pending).

**Vice Chairman Broadsword** recognized **Mr. Duke**, who requested permission to present testimony related to Docket 41-0402-0901 and Docket 41-0403-0901 together. **Vice Chairman Broadsword** granted his request.

He stated that these two rules apply only to Public Health District IV. On October 17, 2007, all seven public health districts were delegated certain responsibilities for regulation of subsurface sewage disposal by the DEQ, pursuant to IDAPA 58.01.03, Individual/Subsurface Sewage Disposal Rules. These proposed rules will repeal IDAPA 41.04.02 and IDAPA 41.04.03, because the standards provided in IDAPA 58.01.03 promote more consistent and effective statewide regulation of subsurface sewage disposal.

**Mr. Duke** requested that the Committee approve Docket 41-0402-0901 and Docket 41-0403-0901 as presented.

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

**Senator LeFavour** asked if the DEQ deals mostly with permitting, or what part of sewage treatment are they involved with? **Mr. Duke** advised that DEQ does deal with the actual permitting, and part of that permit process is public health issues. District staff actually goes out and oversees soils testing to make sure there are adequate soils, and then when the septic system is installed, prior to it being covered up, they also do a final evaluation and approve what people are putting into use. **Senator LeFavour** then stated that the districts still have a role in the process, but these rules are being deleted because they are no longer needed. **Mr. Duke** indicated that statement is correct; because IDAPA 58.01.03 implements similar rules statewide, these rules specific to District IV are no longer needed.

**MOTION** **Senator Darrington** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 41-0402-0901 and Docket 41-0403-0901. The motion carried by **voice vote**.

**16-0202-0902** Relating to Emergency Medical Services (EMS) Physician Commission (Pending).

**Dr. Murry Sturkie**, an emergency medicine physician with St. Luke's Regional Medical Center and Chairman of the Idaho Emergency Medical Services Physician Commission (EMSPC), presented Docket 16-0202-0902. He stated that the purpose of the EMSPC is to establish standards for the scope of practice and medical supervision for licensed EMS personnel and organizations. The EMSPC maintains a Standards Manual that, among other things, describes the skills, treatments and procedures that licensed EMS personnel in Idaho may perform. This rule change incorporates the latest version of the Standards Manual. **Dr. Sturkie** reviewed housekeeping changes made in this docket in order to align the language of the EMSPC Rules with S 1108a, as passed during the 2009 Legislative Session. He noted that Air Medical Service was added as the previous rule did not differentiate between a ground ambulance service and an Air Medical Service.

**Dr. Sturkie** requested that the Committee approve this Docket as presented.

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

**Senator Darrington** stated that this rule appears to be clean up and compliance language, and asked if that was correct? **Dr. Sturkie** responded, "That is correct."

**MOTION**

**Senator Hammond** moved, seconded by **Senator McGee**, that the Committee adopt Docket 16-0202-0902. The motion carried by **voice vote**.

**27-0101-0901**

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

**Mark Johnston**, Executive Director, Board of Pharmacy, presented Docket 27-0101-0901. The current Board rules do not require licensees to provide updates on a timely basis. He stated the Board has encountered difficulty in locating licensees and registrants, especially during disciplinary action. This proposed rule amends the standards of conduct to require licensees to provide the Board with notice of any changes to the licensee's name, address, or telephone number within ten business days from the date of any such change.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**Chairman Lodge** moved, seconded by **Senator McGee**, that the Committee adopt Docket 27-0101-0901. The motion carried by **voice vote**.

**27-0101-0902**

Relating to Rules of the Idaho State Board of Pharmacy (Pending Fee).

**Mr. Johnston** presented Docket 27-0101-0902. He advised that in accordance with statute changes enacted during the 2009 Legislature, these new rules govern telepharmacy within and across state lines. The rules provide that an institutional pharmacy may outsource centralized prescription processing or filling services to a central pharmacy for the limited purpose of assuring that drugs or devices are attainable to meet the immediate needs of patients and residents of the institutional facility or when the institutional pharmacy cannot provide services on an ongoing basis. An institutional pharmacy is defined as a hospital pharmacy. Thus, when a hospital pharmacy has pharmacy service needs, but no pharmacist is on duty, the hospital pharmacy can contract with another hospital pharmacy to serve these needs. The rule sets a fee for the out-of-state, registered, pharmacists who perform telepharmacy for an in-state hospital pharmacy at \$250 per year. This rule additionally contains procedural requirements in order to perform these services.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** asked if this was a temporary fee rule and is being brought back as a pending fee rule? **Mr. Johnston** advised that is correct.

**MOTION**

**Senator Coiner** moved, seconded by **Chairman Lodge**, that the Committee adopt Docket 27-0101-0902. The motion carried by **voice vote**.

**27-0101-0903**

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

**Mr. Johnston** presented Docket 27-0101-0903. He advised this rule change is in response to complaints received by the Board from citizens whose health was compromised because of their prescriptions being trapped inside pharmacies that were closed during normal business hours. It requires that a pharmacy notify the Board of the hours they are open for business, that they stay open those stated hours, and that they notify the Board seven days prior to changing their hours. A pharmacy wishing to change their business hours on a holiday does not need to notify the Board, but must give the public seven days notice.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** noted there are no hours of operation requirement in the rule, and asked if the individual pharmacies set their

hours and just notify the Board? **Mr. Johnston** responded that is correct.

**MOTION**

**Senator Hammond** moved, seconded by **Senator Smyser**, that the Committee adopt Docket 27-0101-0903. The motion carried by **voice vote**.

**27-0101-0905**

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

**Mr. Johnston** presented Docket 27-0101-0905. He stated this rule will provide an exception for the pharmacist to the requirement to strictly follow the instructions of a prescriber by allowing a pharmacist, utilizing his best professional judgment, to provide up to a three month supply of a legend drug that is not a controlled substance when the practitioner has written a drug order to be filled with a smaller supply but which includes refills in sufficient numbers to fill a three month supply.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**MOTION**

**Senator Coiner** noted this is a great idea and moved, seconded by **Senator McGee**, that the Committee adopt Docket 27-0101-0905. The motion carried by **voice vote**.

**27-0101-0906**

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

**Mr. Johnston** presented Docket 27-0101-0906. He advised that the Board has traditionally thought that a pharmacist can only practice pharmacy from a registered pharmacy. This thinking is outdated with the advent of Medicare part D regulations and modern technology. The proposed rule would allow pharmacists to provide pharmaceutical care outside of a licensed pharmacy under certain conditions. These conditions address access to records and information, provide for security and documentation, and mandate the maintenance of records to provide accountability and an audit trail.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**MOTION**

**Senator Hammond** moved, seconded by **Senator McGee**, that the Committee adopt Docket 27-0101-0906. The motion carried by **voice vote**.

**27-0101-0907**

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

**Mr. Johnston** presented Docket 27-0101-0907. He stated this proposed rule is necessary to reflect changes made by the 2009 Legislature to the

Wholesale Drug Distribution Act. It adds repackagers who are authorized distributors of record for Food and Drug Administration registered manufacturers to the definition of normal distribution channel, and thus a pedigree is not required. The pedigree requirement was creating shortages of product at our state hospitals.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**Senator Broadsword** noted the substantive change is in Section 11 of the rule. **Mr. Johnston** confirmed that statement. He advised that the Wholesale Drug Distribution Act was passed in 2007 and since then the 11 pages of statute have been reduced to 9 pages of rule. He anticipates with the money appropriated by the Legislature to rewrite the rule book, they will be able to eliminate the overlapping need to appear before the Committee in the future with rule changes that mimic exact statute changes.

#### MOTION

**Senator Coiner** moved, seconded by **Senator McGee**, that the Committee adopt Docket 27-0101-0907. The motion carried by **voice vote**.

#### 27-0101-0908

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

**Mr. Johnston** presented Docket 27-0101-0908. He stated that this proposed rule change will allow a pharmacist who originally receives a prescription to transfer that prescription to another pharmacy without first having filled the prescription. This will allow transfers for original fills, not just refills. The rule allows required information to be kept on the front or back of a prescription or in a computer prescription database. The rule also aligns with current DEA regulations, and allows pharmacies with common electronic files to fill prescriptions without transferring.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**Senator Broadsword** provided a hypothetical: Patient with cancer takes prescription for chemotherapy drug to pharmacist who does not stock the prescribed drug; that pharmacist could then call another pharmacy to fill the prescription. She asked if that scenario would work under this proposed rule? **Mr. Johnston** advised that under the current rule that could not be done, but under the proposed rule it would be allowed.



**MOTION**

**Senator LeFavour** moved, seconded by **Senator Coiner**, that the Committee adopt Docket 27-0101-0908. The motion carried by **voice vote**.

**ADJOURNMENT**

**Vice Chairman Broadsword** returned the gavel to **Chairman Lodge** who complimented the Committee on efficient work, under the leadership of **Vice Chairman Broadsword**, in reviewing the rules, and announced that the last rule review will be heard tomorrow. **Vice Chairman Broadsword** also thanked the Committee for moving through the rules timely. There being no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 3:38 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** January 28, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:05 p.m., welcomed presenters and guests, and passed the gavel to **Vice Chairman Broadsword** to proceed with rules review for the Department of Health and Welfare.

**RULES:**

**16-0310-0905** Relating to Medicaid Enhanced Plan Benefits (Pending).

**Natalie Peterson**, Bureau Chief, Division of Medicaid Long-Term Care Program, presented Docket 16-0310-0905. She stated that these rules are being amended in response to the federal audit conducted by Centers for Medicare and Medicaid Services (CMS) for the period of July 1, 2006, through June 30, 2007, on the Personal Care Services (PCS) program. She reviewed the audit recommendations and provided the Committee with a copy of the CMS Financial Management Report.

**Vice Chairman Broadsword** noted that the report indicates the State potentially made \$3.7 million in inappropriate payments to PCS providers, and inquired whether the State would be required to pay back that \$3.7 million? **Ms. Peterson** responded, "No," with the explanation that the Department will review those payments and implement an assessment tool that will allow accurate assessment of the children's needs. The Department will then work with CMS to review what inappropriate payments may have been made.

**Ms. Peterson** stated that in order to comply with the recommendations from CMS, the Department is seeking approval to change the payment methodology for children receiving PCS in a PCS home and establishing rules specific to PCS for children. She advised that currently PCS homes are reimbursed based on a flat rate. The new methodology is based on

the individual child's assessed needs rather than a fixed rate. She provided the Committee with a copy of the Personal Care Services for Children Assessment, which was developed by the Department after a comprehensive review of assessments in Oregon, Vermont, Washington and Nevada, and further refined with feedback from stakeholders. She reviewed the assessment form and the review and appeal process.

**Ms. Peterson** stated that the intent of this rule change is to:

- Update the current rules for PCS to reflect changes in the payment methodology for PCS homes;
- Separate, align, clarify, and augment the rules that govern adult PCS and children's PCS; and
- Clarify PCS medication rules.

She stated that while being sensitive to the provider's concerns about how they may be impacted from a reimbursement perspective, the Department must remain focused on the children's assessed needs and a reimbursement methodology that is consistent with CMS direction.

**Ms. Peterson** requested that the Committee approve this Docket as presented.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment 1, 1a, 1b, 1c, and 1d).

**Senator Darrington** stated it was his recollection that when we adopted PCS as a Medicaid program it was not a required program of the federal government, but an optional program opted into by the State of Idaho, and inquired if that is still the case? **Ms. Peterson** advised that was true, under the aged and disabled waiver, PCS is considered an optional program that states may have under their Medicaid Enhanced Plan. **Senator Darrington** asked since this is an optional program, does the State have great latitude with regard to rulemaking authority, and the rules are not mandated by the federal government? **Ms. Peterson** advised that CMS provides guidance when a state submits their waiver plan. In reference to these specific PCS services that were audited by CMS, they found that we have definite room for improvement in the provision of how these services were delivered that was inconsistent with other CMS methodology. **Senator Darrington** asked if she is suggesting then that we have to comply with a federal standard and do not have latitude to amend the rules? **Ms. Peterson** deferred to **Leslie Clement**, Administrator, Division of Medicaid, Department of Health and Welfare, who advised that PCS service is a State plan added as an option, and is not a federally mandated benefit. However, once a state decides to add even optional services, they must comply with all federal regulations. In terms of the definition of what PCS services are, we must follow those federal regulations, and that is the concern of the auditor. We are paying for PCS at a daily rate, and CMS indicates we should implement a fee for service 15-minute incremental billing methodology. Those were really specific directions that came out of the federal audit. She stated we can argue about a number of things in that federal audit, but the \$3.7 million is

looming over our head, so we said we will come into compliance with the federal requirement and implement the policy changes that are identified in the audit. By amending our State plan to demonstrate we are in compliance with this federal regulation, we are hoping that we will not be facing the whole \$3.7 million or potentially more.

**Vice Chairman Broadsword** asked what the State general fund share that goes into PCS care for our children is? **Ms. Clement** indicated she did not have a subtotal for the children's portion of PCS, but thought it to be in the neighborhood of around \$30 million to \$40 million in total funds. The federal match is currently 80 percent but will drop to 70 percent in December 2010. **Vice Chairman Broadsword** asked what the State general fund amount for State plan added programs that are not mandated by the federal government is? **Ms. Clement** advised that approximately 45 percent is claimed for federally mandated services, so we pay slightly more than half for optional services.

**Senator Smyser** asked how many years PCS was paid on a daily rate before the audit was completed? **Ms. Clement** indicated the daily rate had always been paid, and that is why the exposure is so great. She advised that if the audit had been performed by the Office of the Inspector General, the entire program would have been reviewed. CMS tends to just look at this period of time, and thus insulated us a bit from the full exposure of the fiscal impact.

**Senator LeFavour** asked for a profile of the myriad of PCS that is offered and what the comparative cost would be to the families? **Ms. Peterson** indicated she did not have figures regarding the family cost for the various services, but indicated that if a child is eligible for medicaid services, they are eligible for all of the services provided based on the needs of the child, and she listed several therapy programs. **Senator LeFavour** asked if there are any less intensive PCS than those therapies? **Ms. Peterson** indicated that PCS are based on the medical needs of the child. **Senator LeFavour** stated she is wondering if there are other types of interactive therapies that require a less professional level of assistance that may be more affordable for the State. **Ms. Peterson** deferred the question to **Ms. Clements** who advised that PCS in a home are related to assistance with activities of daily living. There is also an array of services available outside of the home which would include center based services for a child with developmental disabilities and mental therapy needs that can be provided by paraprofessionals. She stated that the Department is putting a lot of energy right now into redesigning the children's developmental disability benefits because they are heavily loaded with therapies rather than balanced with support services and respite services. The Department's aim is to look in the long term at a way to sustain this program and really provide what is needed. **Senator LeFavour** indicated that is the information she was looking for and asked if those lower level services are now available? **Ms. Clements** indicated there are some paraprofessional services that are provided in homes and the community in the area of psycho social rehabilitation.

## TESTIMONY

**Tabetha Jolly**, representing several PCS families in the State of Idaho,

spoke **in opposition** to Docket 16-0310-0905. She stated that the same assessment tool should not be used to assess hourly and 24-hour PCS homes, because hourly PCS is very different from 24-hour PCS. She stated that the proposed assessment will discriminate against babies and toddlers up to age four, and children suffering with severe emotional disturbances will have the hours they currently qualify for drastically reduced, or they will no longer qualify for any services at all. She further stated that the current assessment addresses most aspects of the children's medical needs, while the proposed new assessment seems to focus on a parent who needs someone from a PCS agency to come into their home and assist their child for a few hours a week. She compared examples of the current assessment with the proposed assessment and noted the reduction in allowed hours. Her concern is that the proposed new assessment tool will drastically cut the hours of care per week and that providers will no longer be able to afford to offer the care. She stated that using the threat of fines from CMS to create an assessment that goes directly against the laws of the State and affects so many PCS children is simply a scare tactic.

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

**Vice Chairman Broadsword** questioned one example given where six children were living in a home and each was being allowed 35 hours per week, for a total of 245 hours, and asked how one provider could provide that much service in one week? **Ms. Jolly** clarified the example given, stating that the six children were not in the same home. **Vice Chairman Broadsword** questioned why shopping hours would be allowed, as that is something that must be done for the rest of the family. **Ms. Jolly** stated those hours would be for picking up medications, school shopping, special diet needs, and doctor appointments, all of which are now accepted by Medicaid. **Vice Chairman Broadsword** indicated her belief that most of those things are part of the everyday chores of a mother, and should not be considered personal care service for one child versus the whole family. **Ms. Jolly** stated that as a mother she also does those things for her children, but these are not our children. **Vice Chairman Broadsword** stated that she struggled with that concept as this rule is for a PCS home. That means they live in that home, and you are the pseudo mother whether they are your biological child or not. **Ms. Jolly** stated, "That is correct."

**Senator Smyser** asked if someone from the Department might be able to respond to the question of why they are not reimbursing for those services. **Vice Chariman Broadsword** recognized **Ms. Peterson** who stated that each category on the assessment contains an age range in which certain tasks are considered developmentally appropriate. Where there are age applicable services, if the nurse feels that the medical needs of that child need to be taken into consideration and are over and above usual care, they would be taken into consideration. She also pointed out, in reference to natural support, there is a check box to indicate that the child is residing in a PCS home, and this allows for

consideration that there may not be those natural supports that would be potentially available in other settings. There is also a section regarding medical escort needs. If there are a lot of doctor appointments or therapy appointments, those things can be taken into consideration. **Senator Smyser** asked if she was saying that those things would be reimbursed? **Ms. Peterson** indicated she was saying that the medical needs of that child would absolutely be taken into consideration and the hours needed to take care of that child would be authorized.

**Vice Chairman Broadword** indicated her view of a PCS home is a foster home that has taken in a special needs child, and asked **Ms. Peterson** to explain just what a PCS home is. **Ms. Peterson** deferred the question to **Michelle Britton**, Administrator, Division of Family and Community Services, Department of Health and Welfare, who indicated she handles services for infants and toddlers with disabilities and children who are in state custody from abuse and neglect. Many of these children are in state custody in foster care, so in addition to the PCS payment that is made to them they also receive a foster care payment. That payment is intended to provide room and board and basic care. The rate for infants is around \$250 per month, for a child 6 to 12 it is about \$350 per month, and for a child 13 to 17 the payment is around \$430 per month. In addition to the foster care payment, if that child has social security (SSI), then the state collects the SSI payment to offset foster care costs, and the money is available for other expenses for that child. In addition, if a child is placed in a PCS home under guardianship, the state will help that PCS provider become the guardian. That provider then receives the PCS payment, and in addition, if the child receives SSI, they receive the SSI payment of \$670 per month. She advised that special needs foster care payments cannot be made in addition to PCS payments, because the federal government looks at that as a double charge, but that the room and board share from foster care can be made in addition to PCS payments.

**Vice Chairman Broadword** thanked **Ms. Britton** for the program overview, and **Ms. Jolly** for her testimony.

## TESTIMONY

**Kristine McFate** spoke **in opposition** to Docket 16-0310-0905. She stated that she is a PCS provider. She voiced her objection to the limitations on the new assessment form. She stated that the proposed assessment has many age restrictions and those age restrictions go against the Idaho Statute and are in conflict with the Idaho Medicaid Providers Handbook under personal care services guidelines. She cited *Idaho Code* related to the descriptions of activities performed by those providing personal assistant services. She stated that PCS providers open their homes to very needy children with a wide range of mental, emotional, and other disability conditions. They treat them as if they were family, support them, provide for them, and work on countless behavioral problems. It is because of the type of structure and the care given in a PCS home that these children improve. She advised that if this assessment is adopted providers may not be able to continue to care for these children and they will go to group homes, hospitals, or residential treatment centers, where the charge would be from \$200 to \$500 per day

for each child. She disputes that the State will save money with this assessment change, but rather that the care for these children will be substantially increased. She stated that the child would not have the benefit of mom and dad figures in their lives, but instead a hired worker who is not allowed to treat them as a family member. She added that it is a disservice to these needy children to change the current assessment.

**Vice Chairman Broadsword** thanked **Ms. McFate** for the well prepared testimony and advised that a rule last year changing rates for adult PCS care in nursing homes to 15 minute increments brought many of the same or similar concerns. She noted that the Department recently advised that many of those providers are getting more under the new system than they were before. So it is not necessarily how you are paid, it is what you are paid.

**Senator LeFavour** asked if a PCS family is given an authorized maximum number of hours? **Vice Chairman Broadsword** recognized **Ms. Clement** who responded, "No." She stated that the child's needs are assessed on an individual basis. She stated a child who is high functioning and in school all day long would have less time authorized than another child who may have medical and behavioral issues. She did state that the federal auditor looked at a group of high functioning children, which is not representative of all the PCS homes in the State.

**Vice Chairman Broadsword** asked **Ms. McFate** if she commented when the draft assessment tool came out? **Ms McFate** responded, "Yes."

## TESTIMONY

**Ms. Britton** spoke in support of Docket 16-0310-0905. She acknowledged that the State does have good PCS providers who are invaluable to the Department and the foster care system. There are a lot of other services that are available to children who have special needs through school, developmental therapy, speech therapy, and mental health therapy. Some of those services can also be delivered at home. She stated there is a big range in the severity level of children served by PCS providers and the Department will continue to look at the assessment tools regarding behavioral issues for a child. She advised that in the event a child is returned to the State by a provider who can no longer care for that child because of some reimbursement issue, if the child is in the Department's custody or the Department has made the placement for guardianship, the Department will be responsible for identifying another PCS provider who can serve that child. That may be a foster home with PCS coming into the foster home or another foster home that is a certified PCS provider.

**Vice Chairman Broadsword** noted that the assessment tool indicates "draft" and asked if it is still a work in process and whether there is an appeal process.

**Ms. Britton** indicated it is still in draft because the Department is working with Medicaid on some of the behavioral measures that are on that tool. She deferred the question regarding appeal process to **Ms. Clement** who advised the assessment will be rolled out as a test so the Department can

be confident it is reliable and does a good job in identifying the actual needs of the individual child. We will roll it out without changing reimbursement for the next five months. If we find during that time that we need to make changes in the assessment tool, we will make those adjustments before it is implemented in its final form July 1. **Vice Chairman Broadword** asked if there is still an opportunity for PCS providers to give input? **Ms. Clement** responded, "Yes."

**Vice Chairman Broadword** asked **Ms. Peterson** to conclude her comments, and asked that she address the question of what happens if this rule does not pass. **Ms. Peterson** indicated that this is an ongoing process and the nurses who will be completing the assessment are trained registered nurses employed by the Department with a lot of training in the assessment process. These are nurses within each region whose case loads are comprised of those children. She advised that during the development process this assessment was taken out to the home so the Department could evaluate it. The Department will also review assessments as they come in to look at the hours that were in place before and the hours assessed under the new rule. She stated that currently the Department does not have a statewide standard, but each agency is responsible for doing the assessment. This will level the playing field, and allow the Department to gather necessary data to identify what the needs are. She advised that in collaboration with CMS the Department has worked out some disagreements, so she feels CMS will work with the Department if further revisions are needed. She stated that if this rule is not adopted, there is a risk that recoupment efforts will be initiated based on the \$3.7 million paid. The other potential risk is the additional exposure during subsequent fiscal years.

**Senator Hammond** asked if these changes are caused by our need to be in compliance with CMS rules? **Ms. Peterson** responded, "That is correct." **Senator LeFavour** asked if these changes were the only changes the Department could have made, or did it have other options? **Ms. Peterson** stated the recommendation to make the change in the reimbursement methodology is a pretty strong recommendation. **Senator LeFavour** asked if the Department was told what to change the methodology to? **Ms. Peterson** responded, "Yes, to change the reimbursement methodology to 15 minute increments."

**Senator Darrington** noted the comment by **Ms. Jolly** that the Department was engaging in scare tactics, and asked if the scare tactic is more about the federal government coming down on Idaho if we do not make the recommended changes? **Ms. Peterson** responded that it is not the Department's intent to use any type of scare tactic, but they are just trying to introduce a reimbursement methodology that is consistent with the CMS direction. **Senator Darrington** provided the Committee and the guests with a history of PCS. He stated that this Committee bit the bullet along with the Senate and the House and created PCS because there was a need and hopefully we could keep some kids at home. An unintended consequence, which has been dealt with through rules, was separate PCS homes. The Committee almost did not pass PCS because of exactly what is happening today. We recognized that we were going to



create a whole new category of providers and the providers then would be in a position to leverage this Committee for a larger piece of the pie. That is human nature, everyone thinks they are entitled to a little more. It is true of all classes of providers at all service levels in every program. He added, however, that our budget is down one half billion dollars next year, and if there are some revenue enhancements they will not be anywhere near enough to make up one half billion dollars. The State is facing three big problems: education, corrections, and Medicaid. His advice to the Committee is that it must do the best it can with what it has while it can, because we are headed for harder times.

## MOTION

**Senator Coiner** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0310-0905.

**Senator LeFavour** asked how many in the audience signed up in opposition and how many in support, and whether we have heard from any of the disability advocacy agencies on this rule? **Vice Chairman Broadsword** advised that the Committee heard from everyone who signed up to testify, that the sign up sheets would be available for her after the meeting, and that she had not received any comments from disability advocacy agencies. She commented that she heard the Department say that this is a draft rule and they are willing to go back and work on this if it does not work out. She encouraged the PCS providers to stay in close contact with the Department, and have them do a practice assessment test on their child to make sure the provider and the child are getting all the services they are entitled to. She expressed appreciation for what the providers do.

**Senator LeFavour** debated against the motion, stating she has a growing skepticism and suspicion that some rule changes come more from budget concerns than the best interest of families. She stated in all the committees she sits on budget cuts are affecting people with disabilities, and it is hard to see the cuts affecting the same people over and over. Because of her discomfort she stated she will vote in opposition to the docket.

## VOTE

The motion carried by **voice vote**, with **Senators LeFavour** and **Bock** voting “**Nay**.”

**Senator Coiner** commented for the record that he does not see this as a cut in services, but a reassessment of how we determine payment for the PCS provider. Time will tell if services are cut or enhanced by this rule and next year we will look forward to hearing the results.

**Senator Hammond** commented that he is discouraged by the comment made by those voting against this rule. He stated that he directly asked if the changes in this rule were prompted by federal oversight, and was assured they were. If there are suspicions that this change is due to budgetary reasons, then the people who have testified before us have not been heard. He advised that the Committee members all have a responsibility to make some tough decisions, and at the very minimum if you vote against a rule you should offer an alternative. **Senator LeFavour**

advised that in some cases she has offered alternatives. She stated that she does not understand how this works entirely, but has lingering suspicions from other situations we have faced that this could be a tool for Medicaid under pressure to reduce services. She added that when you have a different measure you can apply it in a way that is far more restrictive. If you are limited to 15 minutes rather than four hours, it could be a great tool of the budget to make more efficiency, but it could also, in the economy we face, be used in a way that is not okay. She stated that she has an obligation to the people she represents to vote her conscience and to vote for what she thinks is right.

**Vice Chairman Broadsword**, as chairman of the rules for this Committee, stated that we all have the right to vote our conscience and we never question another's vote. However, the Department has an obligation to make sure that they are doing what is in the best interest of that child, and they do not use children to cut the budget.

**16-0304-0902**

Relating to Food Stamps Program in Idaho (Temporary).

**Rosie Andueza**, Program Manager, Division of Welfare, Department of Health and Welfare, presented Docket 16-0304-0902. She stated that given the current economic climate and the burden placed on low-income Idahoans in need of food assistance, the Department is removing the asset test as one of the requirements for food stamp eligibility at the time of application. She advised that this temporary rule change became effective for a period of twelve months beginning June 1, 2009. The change will allow individuals with very low incomes who would otherwise be eligible for benefits, if not for the ownership of some assets, to access necessary food assistance. This rule removes only the asset test as a part of food stamp eligibility. Families must still have incomes below 130% of the Federal Poverty Guidelines in order to qualify for food stamps.

**Ms. Andueza** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** questioned why, if this is a federal program, the Fiscal Impact statement for this rule notes the Department estimates it will need supplemental general funds of \$20,100 in Fiscal Year 2009, and \$231,000 in Fiscal Year 2010? **Ms. Andueza** advised that with this rule change the Department requested and received approval for ten temporary State staff. That staff was necessary to help get through the high number of individuals applying for food stamp assistance.

A discussion was held between Committee members and **Ms. Andueza** regarding when this rule would expire. **Vice Chairman Broadsword** quoted from the rule that it would expire on May 31, 2010, unless the rule is not extended by concurrent resolution of the 2010 Legislature, in which case the rule expires at the conclusion of the 2010 Legislative Session.

**Senator Darrington** inquired, if adopted, when would the temporary rule expire, and whether the Department anticipates requesting an additional temporary rule when this rule expires? **Ms. Andueza** stated that it was her understanding that, if adopted, the rule would expire on May 31, 2010, and that the Department is not sure at this time how they will proceed when this rule expires. That decision will be based on economic conditions at that time.

**Chairman Lodge** asked how long entitlement lasts when someone is accepted into the food stamp program? **Ms. Andueza** stated that the typical family gets a six month certification period, while the elderly and disabled are certified for a twelve month period.

**TESTIMONY**

**Kathy Gardner**, Director, Idaho Hunger Relief Task Force, spoke **in support** of Docket 16-0304-0902. She stated that the Food Stamp Program is the nation's single most important program in the fight against hunger. It is targeted, responsive to economic conditions up or down, has incredible payment accuracy, provides economic activity in our communities and is being used as a last resort by honest Idahoans in an extraordinary time.

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

**Vice Chairman Broadsword** thanked **Ms. Gardner** for her testimony and complimented the important work of the Task Force.

**TESTIMONY**

**Karen Vauk**, President and CEO, Idaho Food Bank, spoke **in support** of Docket 16-0304-0902. She stated that the Idaho Food Bank is the single largest provider of free emergency food in the State. Based on the number of people in poverty the Foodbank has a goal to provide a minimum of 34 pounds of emergency food per person per year. **Ms. Vauk** provided a map of Idaho indicating counties in which that goal is met and those where the goal is not met. She displayed for the Committee a typical food box containing 34 pounds of food. She advised that without the removal of the asset test the increase in people relying solely on the Foodbank would likely push the Foodbank beyond its capacity, and by removing the asset test, we can help families with their immediate short-term needs, and not force them to even lower depths of poverty.

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

**TESTIMONY**

**Vivian Parrish**, Convener of the Idaho Interfaith Roundtable Against Hunger, presented written testimony (see Attachment 6) **in support** of Docket 16-0304-0902.

**TESTIMONY**

**Christine Tiddens**, Legislative Advocate for Catholic Charities of Idaho and the Roman Catholic Diocese of Boise, presented written testimony (see Attachment 7) **in support** of Docket 16-0304-0902.

**MOTION**

**Senator Darrington** moved, seconded by **Senator Bock**, that the Committee adopt Docket 16-0304-0902. The motion carried by **voice vote**.

**16-0304-0903**

Relating to Food Stamps Program in Idaho (Pending).

**Ms. Andueza** presented Docket 16-0304-0903. She stated the changes included in this docket are another effort of the Department to simplify the Food Stamp Program rules, thus improving customer service and quality. The rule is being aligned with recent changes in federal statute, and simplifies reporting requirements for households that have all elderly or disabled members. A telephone utility allowance is being added since many households have phone services as their only utility expense, and changes have been made in the calculation of the proration of food stamp benefits when a household applies for benefits during the middle of the month.

**Ms. Andueza** requested that the Committee approve this Docket as presented.

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 Bock** moved, seconded by **Senator Hammond**, that the Committee adopt Docket 16-0304-0903. The motion carried by **voice vote**.

**16-0304-0904**

Relating to Food Stamps Program in Idaho (Pending).

**Ms. Andueza** presented Docket 16-0304-0904. She stated that the rule is being changed to align it with the method used to calculate income by the Department's new eligibility system (IBES). The rule change clarifies the criteria used to determine a full month of income for food stamp households, thus improving Idaho's performance in the Food Stamp Program.

**Ms. Andueza** requested the Committee approve this Docket as presented.

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

**Vice Chairman Broadword** asked if the Department receives an award for improvement, where does that money go? **Ms. Andueza** stated she was not sure how that award would be allocated, but would make inquiry and provide that information.

**MOTION**

**Senator Hammond** moved, seconded by **Senator Bock**, that the Committee adopt Docket 16-0304-0904. The motion carried by **voice vote**.

**GAVEL CHANGE** **Vice Chairman Broadsword** returned the gavel to **Chairman Lodge** who thanked the Department for their cooperation in presenting rule changes timely. She also thanked **Vice Chairman Broadsword**, the Committee, and staff for the superb work during rules review.

**MINUTES** **Senator LeFavour** moved, seconded by **Vice Chairman Broadsword**, that the Committee accept the January 19, 2010 minutes as written. The motion carried by **voice vote**.

**ADJOURNMENT** **Chairman Lodge** announced that the Committee would not meet on Tuesday, February 2, 2010. With no further business to come before the Committee, the meeting was adjourned at 4:51 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 1, 2010
- TIME:** 3:00 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, LeFavour, and Bock
- MEMBERS ABSENT/ EXCUSED:** Senators Hammond and 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.
- CONVENED:** **Chairman Lodge** called the meeting to order at 3:05 p.m. and welcomed guests.
- SCR 113** Commending the Idaho Children and Nature Network for its Success in Raising Awareness about the Importance of Children Establishing a Meaningful and Lasting Bond with the Great Outdoors.
- Senator McGee** presented SCR 113. He stated that the Idaho Children and Nature Network is a partnership including the Department of Parks and Recreation, Department of Fish and Game, federal agencies, private industry, and the general public. The Network is working together and leveraging collective resources to accomplish its goal of connecting Idaho's children to nature so that they can be healthier, happier and smarter. With television, computers games, and the internet it is easy to stay indoors. With this resolution, the Network is commended for encouraging children to spend more time outdoors, and take advantage of the wonderful outdoor activities we have in the State.
- Senator McGee** requested that the Committee support this resolution as presented.
- TESTIMONY:** **Vicky Runnoe**, Conservation Education Supervisor, Idaho Department of Fish and Game (IDFG), spoke **in support** of SCR 113. She conveyed the Departments appreciation to **Senator McGee** for bringing this resolution before the Legislature, and advised that IDFG has been involved with the Idaho Children and Nature Network from its inception. IDFG helps young Idahoans connect with Idaho's outdoor heritage through youth hunting and fishing clinics and educational programs. They work to help bring indoor children outdoors where they can experience the excitement of catching their first fish, harvesting their first pheasant, or holding a song

bird in their hands. She stated that helping our children to enjoy Idaho's nature from backyards to mountain tops will ensure a healthy future for Idaho's children and for wildlife resources.

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

**Vice Chairman Broadsword** inquired whether IDFG has a financial investment in this Network by helping with advertising, and, if so, are those funds part of the standard budget. **Ms. Runnoe** advised that funds provided to help with advertising are part of the standard budget. She advised that IDFG has worked with the Idaho Fish and Wildlife Foundation to provide extra funding for some Network activities. **Senator LeFavour** commented that the outdoors develops imagination and problem solving skills, which would be an additional benefit for our children in academic work and life in general.

**MOTION**

**Senator Bock** moved, seconded by **Senator Broadsword**, that the Committee send SCR 113 to the floor with a do pass recommendation. The motion carried by **voice vote**.

**RS 19228C1**

Relating to Immunization.

**Chairman Lodge** announced that RS 19228C1 would be pulled from the agenda for further editing, and would be considered at a later time.

**RS 19179C2**

Relating to Personal Assistance Services.

**Paul Leary**, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, presented RS 19179C2. He advised that during a review of and response to a Centers of Medicare and Medicaid audit on Personal Care Services (PCS) the need to clearly distinguish personal care services for children by PCS Family Alternate Care providers from personal assistance services for adults was identified. The proposed bill seeks to distinguish PCS for children provided by PCS Family Alternate Care Providers from personal assistance services for adults by amending, *Idaho Code*, Section 39-5601, adding definitions, and establishing annual uniform reimbursement rates for agencies and providers. In addition, certain terms have been updated to reflect current usage, and to establish consistency with current practice and rules, specifically, "service coordination" instead of the outdated "case management."

**Mr. Leary** requested that the Committee send this RS to print.

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

**Chairman Lodge** noted that **Mr. Leary** stated that a definition was being added for PCS Family Alternate Care Home, and questioned whether that should be PCS Family Alternate Care Provider. **Mr. Leary** indicated he used the terms interchangeably, but the language of the bill is consistent

with the term “provider.”

**Vice Chairman Broadsword** noted that the last sentence of the bill reads, “The director shall promulgate and adopt such necessary rules to implement the requirements of this section.” She stated the Committee just considered rules on this issue, and asked if it would be necessary to repromulgate rules if this RS is sent to print? **Mr. Leary** stated that because of the federal audit, parallel changes have been made in the Statute and the rules. **Vice Chairman Broadsword** asked if the rules just passed fit this legislation, should it be approved, and if we needed both in order to comply with the audit? **Mr. Leary** advised that the rules were needed to comply with the audit, and the Deputy Attorney General suggested an update to the Statute aligning it with the rules.

**Senator Bock** asked what happens if the Statute does not pass even though the rules have been approved? **Mr. Leary** stated that this does not really change the process that has been practiced over the last few years, so he does not see any impact other than potentially some confusion in the future. **Senator Bock** indicated he is not sure what the inconsistencies alluded to are, but he is troubled with the idea that we have the potential of creating some inconsistencies by not enacting this Statute. **Mr. Leary** deferred to **Peg Dougherty**, Deputy Attorney General, for an answer to the question. **Ms. Dougherty** stated that the sentence regarding the Department’s responsibility to promulgate rules, that was referred to earlier by **Vice Chairman Broadsword**, was already existing in the Statute, so the Department certainly had the authority to promulgate rules with regard to personal care services. The problem is that the Statute was just talking about adults while there was a service being provided for children that the Statute did not contemplate. Rules were promulgated pursuant to the Statute so that services for children could be provided. She advised she does not think that there is any lack of burden on the part of the Department to have promulgated those rules. **Senator Bock** stated that he is concerned that we have rules that talk about services to children, and we do not have authority in the Statute to back it up. **Ms. Dougherty** advised that she would interpret the existing Statute as language that is general enough to allow the promulgation of rules with regard to children. She stated that the confusion arose from labels in the Statute such as “Personal Attendant” and “Case Management.”

**Senator Darrington** commented that his interpretation would be that we adopted the rules, the rules will stay there, but this will simply fall under the same umbrella, and asked if he was correct? **Ms. Dougherty** stated he was correct that the Department’s authority for creating those rules would fall under the umbrella.

**MOTION**

**Senator Darrington** moved, seconded by **Senator McGee**, that the Committee print RS 19179C2. The motion carried by **voice vote**.

**PRESENTATION**

Relating to Community Health Care System and a Report on the State Grants.

**John Watts**, representing the Idaho Primary Care Association (IPCA),



thanked the Committee for placing into law the Idaho Community Health Center Act in 2007. That Act provided a Grant Program for infrastructure development of the Community Health Centers (CHCs). He advised that in 2008 the Legislature appropriated \$1 million to that end, and those grants have since worked through the administrative process of the Department of Health and Welfare and out to some of those centers.

**Mr. Watts** introduced **Denise Chuckovich**, Executive Director of the IPCA, who provided the Committee with a Report detailing the programs and progress of the IPCA (see Attachment 3). She reviewed charts in the Report detailing patient demographics, including types of health care provided, patient age groups, patient insurance status, and patient income status. She provided an overview of how the CHCs Grant Program funds have been used to provide more dental and primary care services to Idahoans, and advised that the 2009 American Recovery and Reinvestment Act (ARRA) also provided one time-funding that is being used to serve more uninsured patients, preserve jobs, and upgrade aging facilities and equipment. She stated that CHCs are the heart of the primary care safety net. They are not for profit organizations that are governed by a community-based board of directors in which a majority of the board members are patients of the center. The consumer-majority board assures that community members have a strong voice in determining how their health care services are delivered. **Ms. Chuckovich** advised that Idaho has 13 CHCs, with 35 clinic sites.

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

**Vice Chairman Broadword** noted that the pie chart detailing income status indicates 30 percent of patients fall into the "other" category, and asked what type of patient is included in that category? **Ms. Chuckovich** advised that those are the patients for which no income status is collected – primarily those with insurance.

**Ms. Chuckovich** introduced **Tim Brown**, CEO of Terry Reilly Health Center, which is the oldest CHC, established in 1972. **Mr. Brown** thanked the Committee for the support received by the Terry Reilly Health Center. Grant Program funds in the amount of \$130,000 were used to purchase dental equipment which has allowed the Center to increase productivity by 29 percent. This has made a significant impact in the community. The Center is using ARRA funding to increase staffing in the area of mental health and dental services. It has also allowed new equipment purchases as well as technology upgrades, and they look forward to increasing the capacity of the Boise Clinic with ARRA funding.

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

**Senator McGee** commented that from all the discussions at the State and federal level about health care reform, it is pretty evident that it is such a

complex problem that there is probably not one answer. He stated, however, that It is clear from these statistics that we now have people who are not going into hospital emergency rooms as a result of the services offered at CHCs, and this is at least a starting point to begin to reform our health care system in this Country. It is not the panacea for everything but these primary care services that are being provided are saving the State millions of dollars. **Senator Lodge** shared her remembrance of the beginning of the Terry Reilly Health Center in the home of Terry Reilly. She stated we have come a long way in the last 35 years and in the next few years we hope to make more progress.

**Vice Chairman Broadsword** asked if most of the Grant Program funds were used to upgrade dental services because that was the intent of the appropriations bill, and whether the ARRA funds could have been used for other things? **Mr. Brown** advised she was correct that the Grant Program funds were to be used primarily for dental services, and advised they were allowed to complete three separate applications for ARRA funds: (1) a grant to allow hiring of additional staff for up to two years to increase capacity to provide services; (2) a grant for the capital improvement program – infrastructure, technology, and building projects; and (3) a competitive grant for additional capital improvements, for which none of the Idaho CHCs qualified.

**Senator LeFavour** noted her agreement with **Senator McGee's** comments, and stated that as heated as the debate has been on the Health Care Task Force, it is her belief that everyone agrees that CHCs provide a critical service and are one of the best parts of the health care solution.

**Chairman Lodge** recognized **Peg Hopkins**, CEO of Lewis and Clark Health Center, the newest Center in the Association. **Ms. Hopkins** indicated her Center is also associated with the Community Health Association of Spokane (CHAS) system which was founded in 1995 and has been serving citizens of Idaho for about ten years in the Spokane Clinic. The Lewiston Clinic was opened on July 1, 2009, meeting one of the strings attached to the ARRA grant requiring a clinic must be operating within 120 days. The Center had a goal of attracting a new provider base in the community, and they have been successful in attracting one new provider at this time. Fifty percent of the population in the valley is uninsured with dental service being a major issue. The clinic will be offering dental service beginning July 1.

**Chairman Lodge** congratulated **Ms. Hopkins** on making the operating deadline, and asked if they had to locate a facility in that time frame? **Ms. Hopkins** advised that St. Joseph's Hospital offered clinical space, which was a big benefit, and electronic records were transferred for Idaho patients from the CHAS system. **Chairman Lodge** stated that is a good example of how health information technology is so important.

**Vice Chairman Broadsword** asked why a Spokane based system would put a center in Lewiston and not Clarkston? **Ms. Hopkins** stated that they look for leveraging partnerships in the community, and the Lewiston

hospital stepped up with space, while United Way in Lewiston provided some seed money. She stated that the population in the valley does not distinguish itself and they went where they had the best opportunities.

**Chairman Lodge** asked **Ms. Chuckovich** for closing comments. **Ms. Chuckovich** stated that with regard to health care reform, she is hoping that whatever happens we will see more investment in CHCs, as they are a very cost effective way to provide care.

**ADJOURNMENT** **Chairman Lodge** advised that there would be no Committee meeting on Tuesday, February 2, to allow for a floor session at 2:30. There being no further business to come before the Committee, the meeting was adjourned at 3:45 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 3, 2010
- TIME:** 3:00 p.m.
- PLACE:** Room WW54
- 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.
- CONVENED:** **Chairman Lodge** called the meeting to order at 3:05 p.m., welcomed guests, and introduced Dr. David Schmitz with the Family Medicine Residency Practice, and students: Dr. Bitters, Dr. Nelson, and Dr. Blackburn. She thanked Dr. Schmitz for his dedication to the residency program. **Senator McGee** pointed out that Dr. Bitters is doing her internship at West Valley Medical Center and has done a tremendous job. **Vice Chairman Broadsword** noted that Dr. Schmitz served in her District, in St. Maries, and she is hoping to see him back there in the future. She also noted that she has met the students with the Practice Residency, and the Governor has them convinced that Idaho is the place to be. She thanked them for what they are doing for the future of their profession.
- MINUTES:** **Senator Bock** moved, seconded by **Senator Coiner**, that the Committee accept the minutes of the January 20, 2010, meeting as written. The motion carried by **voice vote**.
- GAVEL CHANGE** **Chairman Lodge** passed the gavel to **Vice Chairman Broadsword** to conduct the Committees last rule review.
- RULES:**
- 27-0101-0904** Relating to the Rules of the Idaho State Board of Pharmacy.
- Mark Johnston**, Executive Director, Board of Pharmacy, presented Docket 27-0101-0904. He stated that the Idaho Legend Drug Donation Act requires the Board of Pharmacy to promulgate rules to develop and implement the program. These proposed rules will provide standards and procedures for the transfer, acceptance, and storage of donated drugs; for inspecting donated drugs; for distribution of donated drugs; for dispensing of donated drugs; and provisions to enforce the Idaho Legend Drug Donation Act. He stated that one of the hurdles in promulgating

these rules centered around the statutory definition of a donating entity, and advised that **Senator Bock** is sponsoring statute changes which will require these rules only apply to a single donating entity, nursing homes. **Mr. Johnston** advised that these rules adequately protect the citizens of Idaho, and do not place an undue burden on the free clinics within the State of Idaho.

**Mr. Johnston** requested that the Committee approve this Docket as presented.

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

**Vice Chairman Broadsword** stated that she has been approached by people who indicate they were prescribed a really expensive drug, found they were allergic to the medication, and had to throw the remainder away. This rule and law will not help those people, will it? **Mr. Johnston** responded that it would not, and added that the overwhelming majority of all laws reviewed in other states required that the medication had to be in a hospice under the control of a health care provider, and once it reached the hands of the ultimate user, it was too difficult to prove that it might not have been tampered with. Therefore, this is restricted to the donating entities listed, nursing homes. **Vice Chairman Broadsword** noted that a lot of hospice patients are under the care of a hospice nurse, but the drug is either with the hospice nurse or in the home. She asked if we will ever get to a point where if the drug is individually packaged and labeled it could be donated, and we do not have that huge expense being dumped down the toilet and polluting our rivers? **Mr. Johnston** noted that physicians have the ability to hand out samples, but not every drug is available in sample form – that is one of the downfalls of our system.

**Chairman Lodge** related a personal experience where a family member picked up a three-week prescription, individually sealed, took one and had a reaction and could not take the rest. She has heard the same story from a number of people, and would like to encourage ways to solve this problem. **Mr. Johnston** stated that he does not look at this as the end of the Board of Pharmacy's involvement in this process. From the beginning of negotiations on the statute last year, a plan was set out that will gradually, as safety is proved, add certain entity levels for donated drugs. He indicated that some other states have repositories where drugs are donated with full time employees who certify everything and donate drugs back out to free clinics.

**Senator Bock** commended **Mr. Johnston** for all of his work on this issue during the interim. He added that during this process it was discovered that we could not write rules that were effective or viable with the existing statute so we have had to test everything to make it work right. He stated it is his hope that in coming years we can add assisting living centers and perhaps other facilities, but this is a good start.

**Vice Chairman Broadsword** asked, if we approve this rule today and the legislation meets a snag along the way, what happens to the rule? **Mr.**

**Johnston** indicated that it was his understanding that it would be the Board's responsibility to run emergency rules to have this enacted immediately. **Senator Bock** stated that we want the statute to dovetail with the rule, but during negotiations LSO gave the consensus that, as long as the rules were not overly broad, there would not be a conflict even if the rules were adopted and the statute was not.

**MOTION:** **Senator Hammond** moved, seconded by **Senator Bock**, that the Committee adopt Docket 27-0101-0904. The motion carried by voice vote.

**GAVEL CHANGE** **Vice Chairman Broadsword** stated that this completes rules review for the Committee and returned the gavel to **Chairman Lodge**.

**Senator Coiner** commented that hopefully the Committee can discuss in the near future the problem of disposal of drugs, and what is being done nationally and in the State related to this issue, as well as what steps pharmaceutical companies are taking to be responsible for assisting with disposal. **Chairman Lodge** indicated that suggestion is a good one and asked **Mr. Johnston** to return to the Committee in the future with a report. **Mr. Johnston** indicated the Board is looking at a statute change to be heard later in the session that will reference this issue. **Chairman Lodge** indicated it will be important to publicize the correct methods of disposal. **Mr. Johnston** commented that might be the number one question he gets from the general public, and he has worked with the City of Meridian, City of Boise, Public Works, DEQ, and countless continuing education programs to get the word out. **Chairman Lodge** thanked **Mr. Johnston** for his work in this area and for appearing before the Committee.

**RS 19218** Relating to Physicians and Surgeons (Pending).

**Nancy Kerr**, Executive Director, Idaho Board of Medicine, presented RS 19218. She stated this legislation amends *Idaho Code* 54-1807 by repealing subsection (2) dealing with licensure of physician assistants, and adding a new section 54-1807A, to clarify and expand the provisions for licensure, regulation and physician supervision for physician assistants; to create a physician assistant advisory committee; and to provide for the independent ownership of a medical practice by physician assistants.

**Ms. Kerr** requested that the Committee send this RS to print.

**Chairman Lodge** noted that the Fiscal Note does not indicate any costs for the creation of the physician assistant advisory committee and asked **Ms. Kerr** to explain how funds would be generated to compensate that committee? **Ms. Kerr** indicated that the physician assistant advisory committee already exists by rule. Physician Assistants were licensed under the Medical Practice Act and it does provide for compensation for committee members under the rules.

**Vice Chairman Broadsword** noted that the physician assistants in her District would be very pleased that they can now own their practices. She expressed appreciation for addressing this need, indicating that physician assistants provide adequate care and do their part to help lower overall

cost of health care.

**MOTION** **Vice Chairman Broadsword** moved, seconded by **Senator McGee**, that the Committee send RS 19218 to print. The motion carried by **voice vote**.

**RS 19138C1** Relating to Physicians and Surgeons.

**Ms. Kerr** presented RS 19138C1. She stated that this proposed legislation amends *Idaho Code* 54-1806(4) to add subpoena powers for investigations and depositions of the Board of Medicine.

**Ms. Kerr** requested that the Committee send this RS to print.

**Senator Bock** asked what rights the person responding to the subpoena has to contest the subpoena? **Ms. Kerr** deferred the question to **Jean Uranga**, attorney, Idaho Board of Medicine. **Ms. Uranga** advised that the Board would have to initiate a procedure in district court to enforce a subpoena, and anyone under subpoena would have the opportunity to contest it through the district court proceeding. **Senator Bock** noted that it would take an affirmative act on the part of the Board to actually enforce the subpoena. **Ms. Kerr** indicated this is correct.

**MOTION** **Senator Coiner** moved, seconded by **Senator McGee**, that the Committee send RS 19138C1 to print. The motion carried by **voice vote**.

**RS 19214** Relating to Vital Statistics.

**James Aydelotte**, Bureau Chief, Bureau of Vital Records and Health Statistics, Department of Health and Welfare, presented RS 19214. He stated that Idaho law currently provides for certain amendments to be made to vital records through an administrative process. Likewise, certain delayed certificates may be registered by an administrative process. When an applicant for an amendment or a delayed registration is unable to supply the documentation required by law and rule, the applicant can petition the court to establish the facts needed. There are, however, no procedures to be followed by the applicants and nothing to guide the court in entering an appropriate order. This has resulted in confusion about the process to be followed and the facts needed to be determined by the court, and has resulted in court petitions before the administrative process has been completed and orders lacking the needed factual findings necessary for the Bureau of Vital Records to make the amendment or establish the delayed record. This legislation will establish a simple, clear, process for applicants and for the courts to follow in making changes to vital records.

**Mr. Aydelotte** requested that the Committee send this RS to print.

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

**Vice Chairman Broadsword** asked if this would come into play for a home birth 40 years ago where the physician and attendant are no longer

living, but the mother and grandmother who were at the birth could certify that the child was actually born and provide the Bureau with information to issue a birth certificate? **Mr. Aydelotte** indicated that is an instance where a delayed birth certificate could be put on file. If they are able to provide the Bureau with the documentation that is required by law and rule, the Bureau can place that delayed birth on file. If they are not able to provide us with the required documentation, the Bureau would actually issue them a denial letter, and they can then take that denial letter to the court and ask them to establish the facts through a court order and order the Bureau to put a record on file. What this legislation is proposing is a clear and simple process so the court knows what items the Bureau needs to establish that record.

**Chairman Lodge** noted that she had helped several people in her District get delayed certificates through the Bureau, and one of the problems was determining exactly what was needed. She stated that the Bureau was very helpful with the process.

**MOTION**

**Senator Hammond** moved, seconded by **Senator LeFavour**, that the Committee send RS 19214 to print. The motion carried by **voice vote**.

**ADJOURNMENT**

**Chairman Lodge** advised the Committee that a meeting will not be scheduled for Thursday, February 11, 2010, as the Millennium Committee will be meeting at 3:00 p.m. on that day. There being no further business to come before the meeting, it was adjourned at 3:35 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary



## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** February 4, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW55

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:12 p.m. and welcomed guests. Due to unavailability of Room WW54, the meeting was moved to WW55.

**S 1301** Relating to Pharmaceuticals.

**Russell Duke**, Director, Central District Health Department, Department of Health and Welfare, presented S 1301. He stated that he represents all seven Health Districts on this bill designed to amend pharmacy law regarding unlawful practice. It will make it legal for public health district nurses licensed by the State of Idaho to label and deliver refills of certain prepackaged medications for preventive health services. He advised that for the most part, the medications are provided to low income patients with no health insurance. Those with insurance are typically provided a prescription and referred to pharmacies. The medications are prescribed by a clinician with prescribing authority including physicians, advanced practice nurses, and physician assistants; however, prescribing staff are not always available to label and deliver the medication to public health district clients. This code amendment will eliminate a cumbersome and expensive process of having clinician level staff travel to rural district offices for the purpose of labeling and delivering the medications when this step could be safely accomplished by licensed nurses. **Mr. Duke** advised that an independent review has estimated this statute change will save the public health districts, between \$65,000 and \$100,000 in annual costs.

**Mr. Duke** requested that the Committee send this bill to the floor with a do pass recommendation.

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** asked if there is a downside to this legislation, or any controversy surrounding line 27, or if everyone is in agreement? **Mr. Duke** responded that with everyone consulted on this bill there has been no issues. Initially the Board of Pharmacy requested some changes and those were made.

**Vice Chairman Broadsword** asked if some of the medications are delayed for a week or more, what kind of health detriment occurs? **Mr. Duke** stated that is exactly why this legislation is needed. He advised that an agreement has existed between the Board of Nursing and Board of Pharmacy for 30 years which has allowed this practice without incident, but it is only an agreement and not law. He noted particularly the problem when prescribed medication for birth control is delayed and the potential for unplanned pregnancy.

**MOTION:** **Senator Smyser** moved, seconded by **Vice Chairman Broadsword**, that the Committee send S 1301 to the floor with a do pass recommendation. The motion carried by **voice vote**.

**RS 19492** Relating to the Uniform Probate Code.

**Robert Aldridge**, attorney, representing Trust and Estate Professionals of Idaho (TEPI), a group established to work on pro bono legislation in the area of the Probate Code and Tax Code. He stated that this bill relates to the statute commonly known as the "Caregiver" statute which is being expanded to cover evolving financial abuse situations involving a life time gift of some sort to a caregiver. This bill also clearly defines terms used in the statute such as "relative," and "time period." In addition, this bill clearly defines the "relative" and "charitable entity" exemptions. He stated that these changes will make the statute more effective and much easier to enforce. It will also allow abuse situations to be corrected, while not penalizing care by immediate family which is rewarded by a gift or bequest from the person cared for. **Mr. Aldridge** stated that this bill should have a positive fiscal effect by reducing the number of persons forced onto public welfare and/or Medicaid or other programs because of loss of assets and income through improper transfers.

**Mr. Aldridge** requested that the Committee send this RS to print.

**Vice Chairman Broadsword** stated that she is struggling with this legislation, because many times a person in the last year or two of their life has not contemplated that they are really going to die until that last year. They then take time to donate things or make gifts to people who have been nice to them or have helped them, and not all of those gifts are due to undue influence. She asked if we are building a cliff that people can fall from through no fault of their own, and asked how would one go about proving that a gift was given willingly without incurring a great deal of expense to hire a lawyer? **Mr. Aldridge** advised that this restriction is limited to caregivers, so it is a restricted class of people. He stated that a caregiver is almost always going to be a paid person and that is why

family is exempt. He advised that the person receiving care is often, not always, elderly, and often, not always, starting to lose capacity, and may not understand that their caregiver is actually a paid professional. He indicated that the troubling cases are those where \$50,000 or \$100,000 disappears as well as family antiques, jewelry and mementoes. **Vice Chairman Broadsword** asked if there are statistics that show how many cases of this occurs every year, or what the need for this legislation is based on. **Mr. Aldridge** responded that there are no gathered statistics, but rather anecdotal evidence from a widespread series of areas like conservators, trust officers, and social workers. He added that sometimes recovery of assets could mitigate State assistance funds.

**Senator Hammond** stated that he sees the intent of this bill as protecting the donor from undue influence from a professional care provider that might influence them into giving gifts to them; protecting the family so that they receive the estate they are entitled to; and protecting the State from having to pay for their care because this money is absconded by a paid provider, and asked if that is right? **Mr. Aldridge** indicated that is exactly what it is intended to do, and he could not have said it better.

**MOTION:**

**Senator Darrington**, moved, seconded by **Senator Coiner**, that the Committee send RS 19492 to print. The motion carried by **voice vote**.

**Vice Chairman Broadsword** requested that, when this bill comes back, **Mr. Aldridge** address her concern that these caregivers are guilty by default and there is no presumed innocence.

**RS 19491**

Relating to Public Assistance.

**Mr. Aldridge** presented RS 19491. He stated that when a person applies for and receives 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 advises the seller of the potential consequences of the transaction, or 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. **Mr. Aldridge** relayed examples of a Medicaid recipient's gifting of real property resulting in high tax consequences, and instances where the State has encountered representatives, with power of attorney for a Medicaid recipient, encumbering real property and absconding with the proceeds, thus

denying the State the right to recovery on the death of a surviving spouse. He stated that this bill 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.

**Mr. Aldridge** requested that the Committee send this RS to print.

**Vice Chairman Broadsword** asked if a similar bill was covered in legislation or a rule last year? **Mr. Aldridge** advised that this bill went through the Senate last year, went to the House where there was no objection, but after the final hearing in the House the Title Association attorney indicated there may be a problem, so we withdrew the bill and worked with them during the interim to make a couple of cosmetic changes and returned with this legislation. **Vice Chairman Broadsword** asked if it is possible, under State code now, for a family who found themselves in a high tax consequence after a gift to give over the deed to the State in lieu of the debt? **Mr. Aldridge** advised that you can always undo a gift, and there are circumstances where you could simply undo the transfer if it happens prior to the death of the Medicaid recipient. However, in the example he cited, there was a tax problem because the IRS would not recognize a deed back to the State, and if the children turned it over, they would still be liable for taxes. He added that generally Medicaid will not accept a deed; they want proceeds.

**MOTION** **Vice Chairman Broadsword** moved, seconded by **Senator McGee**, that the Committee print RS 19491. The motion carried by **voice vote**.

**RS 19470** Relating to the Idaho Legend Drug Donation Act.

**Senator Bock** presented RS 19470. He stated that the Legislature passed the Idaho Legend Drug Donation Act in 2009. In writing rules for these statutes, the Idaho Board of Pharmacy and other interested parties determined that amendments to these statutes were required in order to draft rules that were workable. The reference to donating entity is being removed as it was applied to some kinds of entities that were already donating drugs legally to free clinics, and they would have been subject to even greater restrictions than if they were not covered at all. He stated that the single purpose of this bill is to make sure that the original intent is carried out.

**Senator Bock** requested that the Committee send this RS to print.

**MOTION** **Senator McGee** moved, seconded by **Senator LeFavour**, that the Committee send RS 19470 to print. The motion carried by **voice vote**.

**MINUTES** **Senator Smyser** moved, seconded by **Senator LeFavour**, that the Committee accept the January 21, 2010 minutes as corrected. The motion carried by **voice vote**.

**ADJOURNMENT** **Chairman Lodge** reminded the Committee that there will not be a

meeting on Thursday, February 11, 2010, and thanked the Committee and guests for their patience with the meeting room change today. There being no further business to come before the Committee, the meeting was adjourned at 3:45 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** February 8, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

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

**MEMBERS ABSENT/  
EXCUSED:** Senator Hammond

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:03 p.m., and welcomed guests.

**GUBERNATORIAL  
APPOINTMENT  
TESTIMONY** **Tammy Perkins**, of Boise, Idaho, was appointed to the State Board of Health and Welfare to serve a term commencing January 21, 2010 and expiring January 7, 2014. **Ms. Perkins'** political affiliation is Republican.

**Ms. Perkins** stated she is currently the Governor's Senior Special Assistant for Health and Social Services. She provided the Committee with a short biography of her professional and personal life.

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

**Chairman Lodge** invited each member of the Committee to ask a question of **Ms. Perkins**. In response to those questions, **Ms. Perkins** advised that this Board position is advisory and non-voting, and that she feels the Board is focused on and adequately performing its obligation to advise the Director and the Governor on important issues. The Board does not review all Health and Welfare rules, but does review rules involving the Board. She feels Director Armstrong has been a positive addition for the Board. In her opinion, the State has an obligation to help the disabled who cannot help themselves. She indicated she does not have a lot of experience with the Americans with Disabilities Act, but has worked through some issues related to children, and understands those issues. She feels it is the Board's responsibility to advise the Director on tough budget deficit issues.

**Chairman Lodge** thanked **Ms. Perkins** for appearing before the Committee and advised her that a vote on her appointment would be taken at the next meeting.

**S 1310**

Relating to Personal Assistance Services.

**Paul Leary**, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, presented S1310. He stated that the proposed bill seeks to distinguish Personal Care Services (PCS) for children provided by PCS family alternate care providers from Personal Assistance Services for adults by amending sections 5601, 5602 and 5606 of Title 39 of the *Idaho Code*. It also establishes annual uniform reimbursement rates for agencies and providers, and updates some outdated language to reflect current usage and to establish consistency with current practice and rules – specifically “service coordination” instead of the outdated “case management.”

**Mr. Leary** requested a do pass recommendation for this bill.

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

**Senator Darrington** asked if the change from “case management” to “service coordination” is made simply because it is more politically correct, or if it is made to align with federal references. **Mr. Leary** indicated it is just a more comfortable terminology that is currently being used.

**Senator Bock** noted a reference to “mentally retarded” in the language of the bill, and stated that a bill was introduced today before the Judiciary and Rules Committee to try to get rid of that type of terminology. He asked if **Mr. Leary** would entertain the possibility of making a change that is consistent with that bill. **Mr. Leary** responded, “Definitely.”

**Senator Coiner** questioned the fiscal impact statement, asking how this provision for children could be added without fiscal impact? **Mr. Leary** advised that personal care services for children are not being added, they have been provided for children under the authority of the Director. The statute was blind to it, and this became clear with an audit by the Centers of Medicare and Medicaid.

**MOTION:**

**Senator McGee** moved, seconded by **Senator Coiner**, that the Committee send S1310 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Chairman Lodge** will sponsor this bill on the floor.

**S 1315**

Relating to Vital Statistics.

**James Aydelotte**, Bureau Chief, Bureau of Vital Records and Health Statistics, Department of Health and Welfare, presented

S1315. He stated that the Bureau has statutorily imposed stewardship over records documenting events such as births, deaths, marriages, and divorces among others. Most of these are filed correctly and in a timely manner. However, sometimes changes need to be made, or records are not filed with the Bureau on time. Fortunately, our laws and administrative rules provide for these circumstances. When an applicant for an amendment or a delayed registration is unable to supply the documentation required by law and rule, the applicant can petition the court to establish the facts needed. There are, however, no procedures to be followed by the applicants and nothing to guide the court in entering an appropriate order. This has resulted in confusion about the process to be followed and the facts needed to be determined by the court, resulting in court petitions before the administrative process has been completed and orders lacking the needed factual findings necessary for the Bureau to make the amendment or establish the delayed record. This legislation will establish a simple, clear, process for applicants and for the courts to follow in making changes to vital records.

**Mr. Aydelotte** requested a do pass recommendation for this bill.

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

**Senator McGee** stated he assumed this is an attempt to streamline this process, and asked for an example of when this process might be used. **Mr. Aydelotte** advised that this is indeed an attempt to streamline the process for everyone involved. It might be used by a family who had a home birth 20 years ago and did not put a birth record on file. Now the children need a birth certificate to get a driver's license or file for benefits, and need to establish a delayed record. What might trip them up is a lack of documentation and a clear process to establish the birth. **Chairman Lodge** reported that she had helped constituents establish delayed records several times. It was a long process and she and her constituents will appreciate this attempt to streamline that process.

**Senator Bock** indicated he has encountered situations where birth certificates have wrong names and other problems. In some situations the parent's only alternative is to submit to the court what should be obvious on its face. He asked how this bill will remedy that, and if there are administrative procedures that vital statistics might consider in order to streamline the process of correcting birth certificates that are issued incorrectly? **Mr. Aydelotte** advised that there are circumstances in which the Bureau is able to make simple corrections without any kind of lengthy evidentiary process, and the Bureau is mindful of those situations because they not only cause a lot of trouble for constituents but they mean a lot of work for the Bureau. There are other situations which do require documentation because of how important these records are in establishing identity



and citizenship. He stated that, although it can seem very bureaucratic sometimes, we need to preserve the integrity of these records. For those people who need to go to court to establish facts, this process will guide their attorney and the court in determining exactly what they need by way of information. **Senator Bock** asked what kind of errors or corrections require a court order? **Mr.**

**Aydelotte** indicated that it would be a significant change on the certificate, such as a change in the birth date, or some other very significant element and they could not produce required documentation to satisfy the law or rule. **Chairman Lodge** asked if an attorney would be required to obtain a court order? **Mr.**

**Aydelotte** indicated he could not say whether an attorney would be required by the court, but this legislation establishes what would be required to petition the court and what the court order needs to contain for the Bureau to make a change.

**MOTION:**

**Senator LeFavour** moved, seconded by **Senator Smyser** that the Committee send S1315 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Chairman Lodge** will sponsor this bill on the floor.

**S 1313**

Relating to Physicians and Surgeons.

**Nancy Kerr**, Executive Director, Idaho Board of Medicine, presented S1313. She stated that this bill amends *Idaho Code*, Section 54-1806(4), by adding authority for the Idaho Board of Medicine to issue subpoenas for investigations and depositions, and clarifies the rights of the licensed person to have the same right of subpoena. She advised that physicians are often employed by large medical corporations, hospitals, or large group practices which require subpoena's for record production to protect themselves from lawsuits. The subpoena authority allows the Board to obtain the needed information to complete an investigation or conduct a deposition.

**Ms. Kerr** requested a do pass recommendation for this bill.

**Vice Chairman Broadsword** indicated this is valid legislation, but questioned the Fiscal Note, stating that the term "legislative idea" is new and asked for an explanation of the term. **Ms. Kerr** indicated this was language supplied by the attorney drafting the legislation.

**Senator Darrington** commented it is crystal clear that it is an idea for legislation; that is all it says. It is a legislative idea, and may even be a little savings for them.

**Senator LeFavour** commented that legislative ideas may not have fiscal impact, but legislation actually might.

**Senator McGee** asked if other Boards have subpoena powers? **Ms. Kerr** advised that the Accountancy Board, Athletic Commission, Attorney General, Board of Corrections, Certified Shorthand Reporters, and Denturists are among those with subpoena powers.

**Senator McGee** noted that **Chairman Lodge** also has subpoena power as Chairman of a Legislative Committee, although it is rarely, if ever, used. **Senator Darrington** confirmed.

**MOTION:**

**Senator McGee** moved, seconded by **Senator Bock**, that the Committee send S1313 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Senator Smyser** will sponsor this bill on the floor.

**S 1314**

Relating to Physicians and Surgeons.

**Ms. Kerr** presented S1314. She stated that this legislation amends *Idaho Code*, Section 54-1803, by adding definitions to clarify language used. It also amends *Idaho Code*, Section 54-1807, to revise provisions relating to physician assistants, and adds a new section 54-1807A to clarify and expand the provisions for licensure, regulation and physician supervision; to create a physician assistant advisory committee; to provide for the independent ownership of a medical practice; and to provide for patient safety by insuring responsibility for all aspects of care by the supervising or alternate supervising physician. She stated that physicians assistants are providing services to small communities and keeping clinics open in rural areas.

**Ms. Kerr** requested a do pass recommendation for this bill.

**Senator Bock** noted we are eliminating language on page 3 of the bill that states "physician assistants" must be licensed, but in the addition on page 2 we refer to "graduate physician assistants," and asked that **Ms. Kerr** explain this variance in terminology. **Ms. Kerr** stated that a Graduate Physician Assistant is one who has not yet taken the national certifying exam or obtained a bachelor's degree. They are permitted to practice, as long as they practice under the direct supervision of the supervising physician.

**TESTIMONY:**

**Marvin Sparrell**, a Physician Assistant, representing the Idaho Association of Physician Assistants (IAPA), spoke **in support of** S1314. He advised that IAPA has worked with the Board of Medicine on this legislation and stated that IAPA is in full agreement with this legislation.

**Senator LeFavour** asked how many physician assistants in the State of Idaho have started their own practice? **Mr. Sparrell** advised there are probably 13 who actually own their practices at this time. **Chairman Lodge** inquired where some of those practices are located? **Mr. Sparrell** indicated most are in rural areas, with some in the Pocatello area, and one in the Boise area. **Vice Chairman Broadsword** stated there is one near Sandpoint.

**MOTION:**

**Senator LeFavour** moved, seconded by **Vice Chairman Broadsword**, that the Committee send S1314 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Vice Chairman Broadsword** will sponsor this bill on the floor.

**MINUTES:**

**Senator Darrington** moved, seconded by **Senator LeFavour**, that the Committee accept minutes of the January 25, 2010, meeting as written. The motion carried by **voice vote**.

**ADJOURNMENT:**

**Chairman Lodge** reminded the Committee there would be no meeting on Thursday, February 11, 2010, and adjourned the meeting at 3:45 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** February 9, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:03 p.m. and welcomed guests.

**GUBERNATORIAL  
APPOINTMENT  
VOTE:** **Tammy Perkins** of Boise, Idaho, was appointed as a non-voting member to the Idaho State Board of Health and Welfare to serve a term commencing January 21, 2010, and expiring January 7, 2014.

**Senator Darrington** moved to send the gubernatorial appointment of **Tammy Perkins** to the Idaho State Board of Health and Welfare to the floor with the recommendation that it be confirmed by the Senate. **Senator Bock** seconded the motion. The motion passed by **voice vote**. **Chairman Lodge** will sponsor **Ms. Perkins'** appointment on the floor.

**RS 19228C2** Relating to Immunization.

**Susie Pouliot**, CEO, Idaho Medical Association, presented RS 19228C2. She advised that Idaho ranks behind nearly all other states in childhood immunization rates. This legislation seeks to raise those rates in our State by expanding use of the Immunization Reminder Information System (IRIS) by physicians and other health care providers. IRIS not only tracks vaccination rates for the State, but also provides a helpful reminder system for physicians and other health care providers to manage their patients' immunization status. She stated that currently IRIS is an opt-in system, and this legislation changes the IRIS registry to an opt-out program where more robust information regarding a child's immunization status will be available to health care providers. Parents who do not wish to have their children's data included will still have the right to opt out of the system. She added that an opt-out IRIS system would be more efficient and cost effective because it will require less time and effort to assist the minority of individuals who choose to opt out,

than the more time consuming process of obtaining consent from every patient under the opt-in system. In addition, an opt-out system will more readily integrate with existing Electronic Health Record (EHR) Systems in provider's offices, and allow providers a greater ability to manage the immunization status of their patients. Most EHR systems are programmed to integrate with an opt-out system, and currently providers must purchase a unique software patch to connect their EHR Systems with IRIS. She commented that this change is one of the most important tools Idaho has to raise immunization rates in Idaho.

**Ms. Pouliot** requested that the Committee send this RS to print.

**Senator Bock** asked how the registry works, and who is it that is opting in or opting out? **Ms. Pouliot** responded that she is not an expert in the technical aspects of how the IRIS registry works, but indicated it is a system administered by the immunization program within the Department of Health and Welfare. Currently, when an individual receives an immunization, there is a consent process required for those immunization records to be placed in the IRIS registry where they can be accessed by Idaho providers. **Senator Bock** requested that should this bill be sent to print and returned to the Committee for hearing, he would appreciate more background on how the opt-in and opt-out processes work. **Ms. Pouliot** advised she had communicated with Jane Smith, Administrator, Division of Public Health, who has technical expertise on this topic, but was unable to attend today's meeting.

**MOTION:**

**Senator Coiner** moved, seconded by **Vice Chairman Broadsword**, that the Committee send RS 19228C2 to print.

**Vice Chairman Broadsword** asked if more children are immunized and those children are on Medicaid, wouldn't we actually see a cost savings to the State by avoiding later medical problems. **Ms. Pouliot** responded that she would research that point. She added that providers have potential for savings because it would not be necessary to purchase a software patch needed under the current practice, but the question of State long-term savings was not reviewed.

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

**Chairman Lodge** thanked **Ms. Pouliot** and advised her the Committee would look forward to hearing an additional presentation on this legislation.

**PRESENTATION:**

**Chairman Lodge** introduced **Rakesh Mohan**, Director, Office of Performance Evaluations (OPE), Idaho Legislature. **Mr. Mohan** advised that good government is not possible without an effective accountability system – citizens need performance reporting to hold their government accountable. Performance information can also be used by lawmakers in making policy and budget decisions, by

program officials to monitor government programs in a systematic way, and evaluators to assess efficiency and effectiveness of government policies and programs. He stated that incorporating performance measurement concepts into the policymaking process can help clarify legislative intent of a policy before its implementation. Both policymakers and those responsible for implementing the policy should have a common understanding of what is doable, what is not, and at what cost.

**Mr. Mohan** advised that State agencies are required to orally present performance information to germane committees each year. This provides a formal opportunity for policymakers and program officials to engage in an ongoing dialogue with each other to clarify policy intent, goals, and performance expectations. He provided the Committee with his "Top Ten List" for effective performance measurement, and stated that the following four items apply to the Committee:

- Know that performance measurement is inherently a political process—include stakeholders, define what would constitute program success, and agree on the cost of measuring success.
- Keep the performance measurement process simple, understandable, accessible, and affordable.
- Use performance data, along with other information, to make policy, budget, and program decisions.
- Use performance measurement to trigger questions, not to find all of the answers.

**Mr. Mohan** provided a list of suggested reading material related to performance measurement programs. He also provided a hand out printed from the Department of Health and Welfare website charting Strategic Plan Performance Measures for State Fiscal Years 2006, 2007, 2008 and 2009, in reference to the benchmarks set for each measure. He noted that the Department had done a really good job of setting performance measures and presenting the information, other than he would suggest that benchmarks be expressed with only one decimal rather than two. He also noted that several performance measures were at or near the benchmark set, and indicated that perhaps the Committee should question what the benchmarks are based on, as well as whether the benchmark levels should be raised. He indicated his office would be happy to help the Committee look at performance measures within agencies.

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

**Chairman Lodge** thanked **Mr. Mohan** for his concise presentation,

and noted he was listed among the authors of suggested reading materials, and extended congratulations for that work.

**Vice Chairman Broadsword** commented that she was surprised that seven out of ten of the Department's Strategic Plan Performance Measures are not yet available for State Fiscal Year 2009 which ended June 30. She asked if that was normal for it to take that long to report data? **Mr. Mohan** indicated there is a wide reason for why the data is not available and some of that has to do with federal reporting and how the information is verified to make sure it is accurate. He indicated that would be a great question for the Committee to pose.

**Senator Darrington** asked if it is his function of OPE to determine if agencies being evaluated are operating according to law? **Mr. Mohan** responded, "Yes, that is one of our functions." **Senator Darrington** asked if it is also true that it is not one of the functions of OPE to suggest in a performance evaluation that the law should be changed with regard to how an agency operates? **Mr. Mohan** stated that OPE interprets its responsibility differently. He stated that if, during an evaluation, OPE finds something that is not working, it is OPE's responsibility to explain why it is not working and to make suggestions for change, but it is the policymakers who will be making the change.

**ADJOURNMENT:**

**Chairman Lodge** announced that an Amended Agenda for February 10, 2010, is in the Committee folders, and that H 452, which has been referred to the Committee from Resources and Environment, will be on that Agenda, and a copy is in the Committee folder for review. With no further business to come before the Committee, the meeting was adjourned at 3:31 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

MINUTES

**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** February 10, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

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

**RS 19448** Relating to Hospital Licenses and Inspection.

**Representative Bob Nonini**, District 5, presented RS 19448. He stated that Idaho is one of the few states that does not have a hospice house. When people are in terminal stages of cancer and use a hospice facility, the hospice comes into their home and sets up the bed and care they need. North Idaho would like to build the first hospice house in the State of Idaho, and has reached two thirds of it capital campaign goal of \$3 million. Because this hospice house will be dispensing medication, it must be licensed as a hospital. He advised that the hospice agency has been working with the Idaho Division of Building Safety and the Idaho Department of Health and Welfare, and have come to an agreement that rather than go through the process of promulgating rules for licensing and inspections in Idaho, they will default to the federal code. The purpose of this legislation is to allow a hospice agency the ability to build a hospice house as long as certain federal guidelines are met. This legislation would not require that a hospice house be licensed or certified by the State. He stated that federal rules are stricter than Idaho standards, so the citizens will be protected.

**MOTION:** **Senator Hammond** moved, seconded by **Senator Smyser** that the Committee send RS 19448 to print. The motion carried by **voice vote**.

**S 1321** Relating to Public Assistance.

**Robert Aldridge**, attorney, representing Trust and Estate Professionals of Idaho, presented S1321. He advised that this bill



was considered during the 2009 Legislative Session, but before it could be finalized some issues were raised by the title Insurance industry. Interim negotiations resulted in modifications and the bill has been redrafted for consideration by this Committee. He stated that when a person applies for and receives 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. Although Medicaid has a lien on the property, a lien is seldom filed of record in the State of Idaho because: (1) if the residence is being occupied by a spouse, minor child, or disabled child, Idaho is forbidden to report a lien, and (2) after the death of a Medicaid recipient, if there is a surviving spouse, minor child, or disabled child, there is no recovery until the death of the second spouse. In addition, if a lien is filed, it is filed in the Secretary of State's office because it is a lien on more than just real estate. This has led to a number of problems. He advised that sometimes, after qualifying for Medicaid, 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. He related incidents he had encountered where a gifting of property had created unintended tax consequences.

**Mr. Aldridge** advised that 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. In addition the legislation clarifies the role of title insurance companies when they discover a Medicaid Request for Notice.

**Mr. Aldridge** requested a do pass recommendation for this bill.

**Senator Hammond** asked if, when a Request for Notice is encountered in a title search, the title company is required to notify the Department? **Mr. Aldridge** responded, "No, it is simply listed in the title report." He added that the title company has no requirement to notify anyone other than the party seeking the title report through the commitment to offer title insurance. **Senator Hammond** asked how the Department will become aware of a pending sale? **Mr. Aldridge** advised that under this legislation, when a Request for Notice is filed, the individual making the transfer or encumbrance shall provide the Department of Health and Welfare with a notice of transfer or encumbrance within ten days after the date of the

transfer or encumbrance. He noted that the title companies did not want to take on the duty to notify the Department.

**TESTIMONY:**

**Kris Ellis**, representing Idaho Land Title Association (ILTA), advised that ILTA is **neutral** on this legislation. They appreciate the time **Mr. Aldridge** has spent working with them on this legislation during the interim. She stated that it is somewhat problematic to require the title industries to do something that does not affect title. Although ILTA negotiated the language of this bill, and supports the reasons behind it, they want to make the Legislature and the Committee cognizant that it is putting a mandate on the title industry that really has nothing to do with title.

**Vice Chairman Broadword** asked if this mandate will cause a financial burden for title companies? **Ms. Ellis** advised that the numbers they anticipate coming under this legislation are so small that they do not see it as a large financial or time consuming issue. She anticipates one to two percent of title searches will be involved. **Vice Chairman Broadword** asked, if this legislation passes, would ILTA participate in rulemaking the Department will need to undergo to develop the necessary forms? **Ms. Ellis** advised that they would like to participate in that process.

**MOTION:**

**Senator LeFavour** moved, seconded by **Senator McGee**, that the Committee send S1321 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Senator Darrington** will sponsor this bill on the floor.

**H 451**

Relating to Environmental Quality.

**Barry Burnell**, Water Quality Administrator, Department of Environmental Quality (DEQ), presented H451. He stated that this proposed legislation revises the existing Idaho Environmental Protection and Health Act definition of Public Water Supply. The definition will be modified to align the statutes with the DEQ Rules For Public Drinking Water Systems and the US EPA Safe Drinking Water Act definition of Public Drinking Water System. This change in definition will eliminate confusion as to how many connections are needed to be classified as a public drinking water system. Currently the Idaho statute definition of Public Water Supply uses 10 connections as a basis for determining if the water supply is a public water supply. The Idaho Rules for Public Drinking Water Systems defines public drinking water systems using 15 connections. He advised that this change in *Idaho Code* would resolve long standing confusion over the classification of private water systems with 10 to 14 connections. He pointed out that the term "public drinking water system" does not include any special irrigation district. He advised that special irrigation district is defined in rule as an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system and only incidental residential or similar use, where the residential or similar uses of the system comply with the exclusions of certain sections enacted by the Safe Drinking Water Act. This makes it clear that

irrigation districts that are providing water for irrigation of property for non-domestic, non-consumptive use, that those types of systems are not a system that would be considered a public water supply, and subject to the rules for Public Drinking Water Systems.

**Mr. Burnell** requested a do pass recommendation for this bill.

**Senator Darrington** commented that it is his understanding that we are going from 10 to 15 connections to be classified as public drinking water systems, not to exceed 25 people, and there will be no fiscal impact to the State. That numerous small systems, between 10 to 15 connections, will have some benefit because they will not be classified as public drinking water systems. He asked if that is correct? **Mr. Burnell** responded, "That is correct." He added that there are a number of private water systems that are less than 15 connections, and certainly the population base is another characteristic in that definition and DEQ uses this to assist in doing plan specifications with the public water systems.

**Senator McGee** asked if there is any opposition from irrigation districts to this legislation? **Mr. Burnell** advised that there is no opposition.

**MOTION:**

**Senator McGee** moved, seconded by **Senator Hammond**, that the Committee send H451 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Senator McGee** will sponsor the bill on the floor.

**H 453**

Relating to Water Quality.

**Mr. Burnell** presented H453. He stated that the purpose of this legislation is to increase the nonpoint source (NPS) limit on State Revolving Fund (SRF) loans from 5 percent to 20 percent in *Idaho Code*, Section 39-3627(3) in order to help meet federal Green Infrastructure requirements which EPA has on our Clean Water State Revolving Fund (CWSRF) capitalization grant. He advised that the CWSRF monies are primarily intended to be loaned to municipalities for traditional wastewater facilities. The statute in question limits the use of CWSRF for NPS projects to 5 percent of the total state revolving loan fund. The change from 5 percent to 20 percent is being suggested in response to emerging federal requirements for "green infrastructure" based CWSRF loans, and EPA interpretations that inflow and infiltration control measures associated with traditional wastewater facility projects do not qualify as "green" projects.

He stated that because states will be required to fund a minimum amount of green infrastructure projects, the 5 percent cap for NPS projects may limit Idaho's ability to qualify for the full amount of future federal CWSRF awards. Increasing the cap to 20 percent will help protect the State's ability to continue to access the expected higher federal CWSRF grant awards. **Mr. Burnell** advised that

recently the federal government has increased the total amount of funding available to states for CWSRF loans. A minimum of 80 percent of the total CWSRF would continue to fund traditional municipal projects, and would actually end up being an increase over past CWSRF point source awards if the recent trend of higher federal CWSRF grant awards continues.

**Mr. Burnell** requested a do pass recommendation for this bill.

**Senator McGee** asked if this legislation will affect projects like those at Greenleaf which are currently being worked on, and if those projects do not get completed, does this put those communities at a disadvantage by changing that percentage? **Mr. Burrell** advised that existing projects using stimulus funds are already under the 20 percent green infrastructure requirement, and it is for the overall capitalization grant that we receive. We may have a project from a particular municipality or from a location that fulfills the majority of our green infrastructure requirement and then it is not passed on to everyone. We make that up based on the mix of projects DEQ has and we look at every single aspect of a project. If they are doing something that would have a higher emission pump or would construct a wetland, or some other type of advanced treatment, then those are the types of projects all roll together to meet our green infrastructure requirement for this year. For future years DEQ will have the 20 percent requirement and will also be getting more funding, and again will use the same type of reporting mechanism to make sure that the 20 percent is met. It is where we do not have green infrastructure for municipalities that meet the 20 percent, then we will want to look at the NPS community projects to make up the difference.

**Senator Hammond** asked if this is something that the Association of Idaho Cities (AIC) has weighed in on? **Mr. Burrell** advised that he has spoken with AIC's environmental liaison about this bill on the phone, and had no indication that there was any opposition from the AIC.

**Senator Coiner** asked, if these funds are going to cities for their water treatment plants, and DEQ has a requirement for 20 percent green, what qualifies as "green" that you can put in there for the 20 percent? **Mr. Burrell** advised that one project currently on DEQ's intended use plan would be Lewiston Orchards where they want to do water conservation and water metering. That project was ranked very low on the intended use plan and did not get funding, but that would be an eligible type of project. Energy efficiency projects where older pumps are being replaced with newer more efficient pumps on variable frequency drives would also qualify as green infrastructure because they are saving energy. Environmental innovative projects where we might be using some tertiary treatment type of activity associated with waste water treatment plant would qualify. Then there are NPS types of projects that are traditional use like agriculture, forestry, mining, those projects where you are doing

a direct water quality improvement by application of best management practices. He advised DEQ had two of those types of projects on our intended use plan this year. One is the North Freemont Canal System and the other is the Fairview lateral. These are irrigation improvement projects where they are either minimizing the sediment going back into the river or they are converting from an open canal design to a piped canal design. **Senator Coiner** noted that he is confused about the need to get a larger percent of projects in NPS, and asked what the ratio is between requests from municipalities and NPS? **Mr. Burnell** advised that last year DEQ had 105 different requests for CWSRF funding; three were NPS projects. With the 20 percent green infrastructure requirement as part of the grant payment with EPA, we will have to have a separate list of projects that will make up our 20 percent. With EPA not qualifying inflow and infiltration, it begins to minimize DEQ's ability to meet that 20 percent. He advised this legislation is really a strategy that DEQ is asking to be able to employ so that should we have a year where we do not have 20 percent green infrastructure in our traditional waste water loans, that we will be able to go to our NPS pool and draw from that so that we can get the maximum amount of federal assistance.

**Vice Chairman Broadsword** commented in the legislation it says up to 20 percent may be used, and noted **Mr. Burnell** stated that there is a 20 percent requirement by EPA. She asked him to clarify that this legislation is not mandating that DEQ use 20 percent of the funds for these NPS. **Mr. Burnell** stated that DEQ is required to have 20 percent of its capitalization grant in green infrastructure. That 20 percent can come from municipalities or from NPS. DEQ's first choice is to use municipalities, but there may be an instance where we do not have enough of the funds for municipalities, they would want to use NPS. What this legislation does is allow DEQ to go up to 20 percent for NPS. That is why the discretionary language is in there; it gives us the ability to go up to 20 percent as our proposed new cap.

**Senator Coiner** asked if there were 10 projects, with 8 of them being municipalities, and each one of those being only 10 percent green so there is a deficit, could the other two projects be 100 percent green NPS projects to make up the overall mix? **Mr. Burnell** indicated that is correct . DEQ will keep a tally of municipal projects that qualify for green and as we run out of project elements that qualify for green, we know we are going to have to go to the NPS projects to make up the difference. **Senator Coiner** asked if this legislation allows DEQ that flexibility. **Mr. Burnell** agreed it does.

**MOTION:**

**Senator Coiner** moved, seconded by **Senator LeFavour** that the Committee send H453 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Senator Coiner** will sponsor this bill on the floor.

**Curt Fransen**, Deputy Director, Department of Environmental Quality, presented H 452. He stated this is housekeeping legislation, but can be confusing because there are two State executive departments involved, the Department of Health and Welfare and the Department of Environmental Quality and their respective Boards, as well as the seven health districts across the State. Those seven health districts have their own separate statutory authority to promulgate rules concerning public health and environmental matters. Under current law the districts are required to send those proposed rules to the Department of Health and Welfare's Board for review, and that Board performs a review to see if those proposed rules are consistent with State law and rules. This legislation is proposing to make a change to *Idaho Code*, Section 39-416, to require that Environmental Protection rules go to the Board of Environmental Quality while all other rules continue to go to the Board of Health and Welfare. This change was overlooked when the Idaho Department of Environmental Quality became a department and the Board of Environmental Quality was created.

**Mr. Fransen** requested a do pass recommendation for this bill.

**Vice Chairman Broadsword** asked what is now happening with the environmental rules? **Mr. Fransen** advised that there is an informal arrangement between the boards. When the environmental rules come into the Board of Health and Welfare they are sent over to DEQ, and DEQ has its assigned Deputy Attorney General perform the conflict review and send that advice back to the Board of Health and Welfare, and the Board of Health and Welfare acts on that advice. **Vice Chairman Broadsword** asked if this just simplifies matters?

**Mr. Fransen** responded that is correct.

**Senator McGee** asked who makes the determination whether a rule goes to DEQ Board or the Health and Welfare Board?" **Mr. Fransen** indicated in most cases the decision should be pretty simple because of the subject matter, but there could be instances where there is some question. He feels the Boards would need to consult with each other on which Board would be appropriate.

**Senator Darrington** indicated he would expect the determination to be made before it gets to Legislative Services; that it would happen within the agency. **Mr. Fransen** indicated he agreed with that statement.

**Senator McGee** indicated his concern that a decision might be pushed by someone somewhere to one board over the other feeling that board might be more sympathetic than the other board would be about the issue. **Mr. Fransen** indicated these reviews are done on the advice of the Attorney General, so that office will get involved with the issue of which Board receives the rule for review.

**MOTION:**

**Vice Chairman Broadsword** moved, seconded by **Senator McGee**, that the Committee send H 452 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Vice Chairman Broadsword** will sponsor the bill on the floor.

**Chairman Lodge** recognized **Toni Hardesty**, Director, DEQ, and thanked her for taking the time to attend the Committee meeting.

**PRESENTATION:**

Criminal Justice as it Relates to Health and Welfare at the Idaho Department of Correction.

**Brent D. Reinke**, Director, Idaho Department of Correction (IDOC), presented IDOC's Annual Report for Fiscal Year 2009. He stated that one of the things the Department is really concerned about in these difficult budget times is communicating with staff and staying true to our mission. The mission of the IDOC is to protect Idaho through safety, accountability, partnerships and opportunity for offender change. He stated that the IDOC's relationship with the Department of Health and Welfare is very important to IDOC's goal of offender change. He reviewed IDOC offender population from 2005 through January 10, 2010, and indicated that after two years of no growth, because of cuts on every front IDOC is beginning to see population increases grow at about four percent.

**Director Reinke** noted that over the last six years IDOC has added 1381 new beds, and this has allowed them to bring all inmates back to Idaho. Beds in the women's correction center have been increased from 164 to 662. He advised that despite this increase, the prisons are at 99 percent of capacity and IDOC has 318 inmates in county jails. IDOC's violation matrix involving the use of community services like the Department of Health and Welfare, has been extremely helpful in avoiding sending 305 probationers back to prison for a savings of about \$5 million.

**Director Reinke** introduced **Shane Evans**, Deputy Chief, Division of Education and Treatment, IDOC, who thanked the Committee for its ongoing support in IDOC's attempt to provide those quality services both in mental health and the substance abuse arena. Additional he expressed thanks for the ongoing support for the Office of Drug Policy and the Interagency Committee on Substance Abuse of which IDOC is a major player. He stated that support has added to the opportunities IDOC has had to provide those services in the community for those reentering the community from prison.

**Mr. Evans** reviewed IDOC's process with regard to education and treatment. He stated that IDOC's pathways to success program was implemented to provide the appropriate treatment at the right time in anticipation for an effective parole eligibility date. He stated this has had a significant impact in IDOC's ability to timely complete programs, reduction in length of stay for offenders, and prepares the inmate for a successful reentry into the community. He stated IDOC has fully implemented its Level of Care system providing

constitutionally mandated services, and has implemented its Correctional Mental Health Service System manual which provides the agency a comprehensive manner in which they address the mental health needs within the facilities. He advised that over 18,000 direct service hours have been offered by clinicians per year, approximately 250 suicide risk assessments are performed each year, and approximately 1,000 evaluations have been completed for the parole commission. IDOC has expanded its sex offender treatment opportunities with the facilities, to provide offenders with the very best positive based treatment for sex offenders in anticipation of a safe return to communities.

**Director Reinke** reviewed the planning progress of the 300 bed Secure Mental Health Facility which, if it were built today, could be fully occupied. He stated that because of lower crime rates, fewer probation revocations, and accelerated parole releases the IDOC population is about 1,000 inmates under projections. This converts to about \$21 million in savings. He also reviewed the Correctional Alternative Placement Program (CAPP) facility, a 90-day residential substance abuse treatment program, which, if funded during this legislative session, is due to open June 2010. He introduced **Rod Leonard** who has dedicated a substantial amount of time during the past two years to implement this program. This program gives the court three options: (1) CAPP; (2) Retained Jurisdiction Program (Rider); and (3) Therapeutic Community Rider (TC Rider). He stated the plan would be for IDOC to perform a presentence investigation and make recommendations to the court. The court would then select from one of the three options, and recommend a placement based on IDOC's evaluation. He stated that the incarcerated offender forecast using these three programs is anticipated to save \$8 million by 2013.

**Director Reinke** indicated that IDOC's contract rates for medical, mental health, and pharmaceutical services have increased by 90% since 2004. He stated IDOC has cut its operating budget by 8.7% and personnel costs by 10.4% and is attempting to balance increasing prisoner population with budget reality. He indicated that IDOC is at the edge of what they can do in keeping Idaho safe and being able to carry out its mission. He advised his concern is that if IDOC sees significant budget cuts they will have to do less with less, not more with less.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment 1a, 1b, 1c and 1d ).

**Chairman Lodge** thanked **Director Reinke** and **Shane Evans** for their presentation.

**Vice Chairman Broadword** noted **Director Reinke** mentioned the Secure Mental Health Facility will have 25 beds for the Department of Health and Welfare, and indicated it was her recollection when



this was proposed there were to be 40 beds set aside for Health and Welfare. She asked when that changed? **Director Reinke** indicated they looked at the needs statewide with the Department of Health and Welfare and determined that 25 beds would be more than adequate for their needs.

**Senator Coiner** indicated he had talked with **Richard Armstrong**, Director, Department of Health and Welfare, in November 2009 about substance abuse treatment, and at that time there was a backlog of about 1,500 waiting to get into that program. He asked that **Director Reinke** relate where we are now and what will happen in the next year with limited funding? **Director Reinke** advised the wait list has been eliminated; funds are dropping too fast, and it is just not workable. The challenge we are faced with now is the resources in the community are drying up, and with the budget cuts we are going to be facing this fiscal year and next fiscal year, we will see some significant growth in the prison population. **Senator Coiner** asked if IDOC is not even tracking this need and we have no idea how many people out there are waiting to get treatment? **Director Reinke** advised that there is not a wait list as it stands today. If there is an available opportunity for service when the individual applies we consider it. He asked **Mr. Evans** to address the question. **Mr. Evans** indicated that at the point of intake if they do not meet requirements, that information will be captured so we have a sense of who and what the needs are, we just will not be managing a wait list from a resource standpoint. We will still capture the information through early screening and assessments. **Senator Coiner** asked if anyone is projecting the cost to the State of our inability to come up with funds needed for treatment over the next few years? **Director Reinke** responded that as it stands today, no one is tracking that. He stated that is why the CAPP facility and the trio of options for the court is so critical. **Mr. Evans** added that during the past year information has been taken from offenders in custody that have tried to access the system but did not receive treatment, and IDOC is sharing that information with the Department of Health and Welfare and the contractor BPA. We look at those that change from a community based status to either a rider or a term status to see if that was impacted due to substance abuse and the lack of available treatment. We can make some generalized statements about those numbers. That is not the only reason they have come back to prison, but it usually is a major indicator. **Senator Coiner** asked if people are not being able to get to parole because of a lack of treatment? **Mr. Evans** responded that is a challenge. Through the pathways to success program we have been able to capture an efficient and effective method with timely treatment and effective release, but from a staffing standpoint, we are at that window where any further cuts in treatment staff will start to impact our ability for parole preparation. **Vice Chairman Broadsword** asked if the expanded retained jurisdiction legislation has begun to work its way through the system? **Director Reinke** indicated they hope to begin that process next week with the Senate Judiciary and Rules Committee.

**Chairman Lodge** commended **Director Reinke** and his staff on the work they have done to get people into the right programs at the right time and inform the Committee with easy to read and follow information and Black Hat Reports on what is happening. She stated the information provided has made her very aware of what the costs are to society and to the taxpayers. **Director Reinke** responded that it could not be done without the dedicated staff of IDOC. **Senator Hammond** commented that **Director Reinke** has been challenged to manage a growing prison population with less dollars and it would be very easy for him to use some scare tactics to come in and force us to find funds that we really cannot find. Instead he has been a real partner in working with other agencies and working with the Legislature in trying to find reasonable solutions. He conveyed his thanks and appreciation. **Director Reinke** responded that a concerted effort has been made not to bring scare tactics into this discussion. He stated the situation is serious, and these decisions the Legislature is having to make are historic.

**Director Reinke** invited members of the Committee to tour the CAPP facility at 4:00 p.m., Wednesday, February 17, with transportation to the facility provided.

**ADJOURNMENT:**

**Chairman Lodge** announced that Monday, February 15, is the last day for the Committee to hear RSs. She indicated at this time she is not planning a meeting on Thursday, February 18, 2010, and if enough Committee members want to attend the CAPP tour on Wednesday, she will move any agenda items scheduled for that day and not hold a meeting on Wednesday, February 17, 2010.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** February 15, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENE:** **Chairman Lodge** called the meeting to order at 3:05 p.m., and welcomed guests.

**RS 19574** Relating to Prevention of Minors' Access to Tobacco and Permitting of Tobacco Product Retailers.

**Senator Elliot Werk**, District 17, presented RS 19574. He advised that Idaho does not currently charge a fee for the permitting and inspection of tobacco dealers. This results in annual expenditures of Millennium Funds (\$94,000) and taxpayer dollars (approximately \$200,000) to cover the cost of those inspections by the Idaho State Police. To end the taxpayer subsidy of tobacco dealers, this legislation requires the Department of Health and Welfare to promulgate rules to recoup the costs of annual permitting and inspection of tobacco dealers.

**Senator Werk** requested the Committee print this RS.

**Vice Chairman Broadsword** asked if this legislation will apply to tobacco dealers on tribal reservations? **Senator Werk** advised he was not certain, but did not think that would be the case. He added that if our permitting and inspection program extends to reservations, then it would, but past experience indicates the State does not inspect dealers on reservations. He advised he would look into that question and provide an answer.

**Senator Darrington** asked, "What will I say to my little 'C' store in a one-horse town, who takes me into his office where his wall is covered with permits to sell merchandise, and he has just had it"? **Senator Werk** indicated that we are not adding on to the permit burden. The decision to be made is whether or not we feel that the taxpayers should be paying the cost of permitting tobacco retailers

within the State, or whether we think that \$300,000 could go to better use within the Department of Health and Welfare. He noted he understands that a lot of “mom and pop” stores feel permitted to death, but he is asking, “Who should pay the freight for selling tobacco in Idaho”? Is it proper for taxpayers, or is it proper for dealers,” and can the dealer indeed increase their cost for tobacco products by a very slight amount? He stated the average cost of each permit is \$140 annually.

**MOTION:** **Senator Bock** moved, seconded by **Senator LeFavour**, that the Committee send RS19574 to print. The motion carried by **voice vote**, with **Vice Chairman Broadsword** voting “Nay.”

**RS 19298** Relating to Dissolvable Tobacco.

**Senator Werk** presented RS 19298. He provided the Committee with a flyer describing the threat of dissolvable tobacco products (see Attachment 1) and a sample for anyone wishing to try the product. He stated that tobacco companies are currently test marketing dissolvable tobacco that resembles breath mints and strips in select locations around the United States, including Portland, Oregon. This legislation bans the sale of dissolvable tobacco (under penalty of misdemeanor) unless prescribed by a licensed health care professional to ensure that this nicotine delivery product is not sold over the counter in Idaho. He reminded the Committee that it had banned the sale of inhalable alcohol in Idaho.

**Senator Werk** requested that the Committee print this RS.

**MOTION:** **Vice Chairman Broadsword** moved, seconded by **Senator LeFavour**, that the Committee send RS 19298 to print.

**Vice Chairman Broadsword** noted she had a similar bill drafted last fall and was dissuaded from entering it by the American Cancer Society, among others, so she is hoping that **Senator Werk** can find a reason that we can pass this bill.

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

**RS 19403** Relating to Rules Governing Certified Family Homes. Stating Findings of the Legislature and Rejecting a Certain Rule of the Department of Health and Welfare.

**Chairman Lodge** advised that RS 19403 is a resolution, scheduled to be presented by **Jack Lyman**, on behalf of Idaho Housing Alliance. She stated that **Mr. Lyman** is unavailable and asked the Committee to consider printing this RS with the request that it be referred back to the Committee.

**MOTION:** **Vice Chairman Broadsword** moved, seconded by **Senator Darrington**, that the Committee send RS 19403 to print with the understanding that it be referred back to the Health and Welfare

Committee for a possible hearing. The motion carried by **voice vote**.

**RS 19613**

Relating to Naturopathic Physicians.

**Kris Ellis** presented RS 19613 on behalf of the American Association of Naturopathic Physicians. She indicated that there has historically been problems with the existing language in this bill, and this legislation solves a longstanding conflict within the naturopathic community. This legislation repeals the previous Act, and establishes clear guidelines for the education and training of naturopathic physicians. Concerns of this Committee, comments from the Attorney General's office, and concerns of the Idaho Bureau of Occupational Licenses (IBOL) were all considered in drafting this legislation, and education requirements that would ensure public safety were considered. She advised there is an existing lawsuit, and although this bill does not settle the lawsuit, it would solve the lawsuit, which could save IBOL and the State money. She advised that the party to the lawsuit is not in support of this legislation because it does not grandfather in all of the applicants from out of state that currently have applications residing with IBOL. She reviewed the provisions of the bill, clarifying that those who have been practicing natural health care services can continue to practice under the State v. Smith ruling are still allowed to continue to practice. She stated that the Attorney General's office had assisted with the definition of terms used in the Legislation.

**Ms. Ellis** advised that at the suggestion of the Governor's office, this legislation replaces the current Board with the Commission of Naturopathic Medicine (Commission). The Commission will initially consist of one commissioner appointed by the Governor until July 1, 2014, at which time the Governor will appoint three members to the Commission who shall be licensed by the Council on Naturopathic Medical Education (CNME) or U.S. Department of Education (USDE) accredited schools. She stated that the bill sets forth an approved naturopathic medical education program and qualifications for licensure. There is a provision to allow licensing for those who graduated from an accredited school prior to the national exam being developed.

**Vice Chairman Broadsword** expressed concern with the one-person commission for a period of three years, and asked what type of background that person would have? **Ms. Ellis** advised it would likely be someone with a legal background, perhaps a judge.

**Senator Bock** noted from his review of the statute that the Commission could be a lot of work, and asked if the commissioner would be a paid position? **Ms. Ellis** responded that it would be a volunteer position. She added that the main work for the initial Commissioner is developing the rules. She stated that so much detail has been put into the statute that the Commissioner together with the Deputy Attorney General from IBOL could go through those

rules in a relatively short period of time. Public hearings would take more time, but she stated the agreements that have been reached, and the detail of the bill should not require a large time commitment from the Commissioner. She advised that the existing Board has a \$25,000 deficit, so there is a motivation on the part of IBOL and the legislature to keep the cost to a minimum for this Commission.

**Chairman Lodge** asked if anything in the bill is going to cure the IBOL deficit? **Ms. Ellis** advised there is specific language in the bill that allows those funds to be transferred from licensure fees.

**Ms. Ellis** introduced **Roy Eiguren**, attorney, representing the Idaho Association of Naturopathic Physicians, who reviewed the remainder of the bill. He stated that the grandfather provision provides alternatives to the requirement that in order to be licensed in Idaho the individual must be a graduate of a CNME school. The alternatives apply for only a 30-month period, from July 1, 2010, through December 31, 2012. The first alternative provides that an applicant shall be deemed to be eligible for licensure if the applicant documents, to the satisfaction of the Commission, that the applicant: (1) has established a residence in Idaho on or before July 1, 2010; (2) successfully completed a postdoctoral college curriculum or program in naturopathy prior to September 1, 2009, or, for a period of five years prior to July 1, 2010, has held out to the public as a naturopath in Idaho; (3) is currently licensed in Idaho as a doctor of medicine (MD), doctor of osteopathy (DO), or doctor of chiropractic (DC), or is a doctor of chiropractic licensed in another state with a currently active federal drug enforcement agency registration number; and (4) meets the additional educational requirements set forth in Section 54-5108A(2). Those licensed MD's, DO's, and DC's who can document naturopathic medical training and/or experience have the opportunity to take additional education, and thereafter obtain a license. The additional education would be provided by USDE accredited schools or American Medical Association (AMA) approved education. He noted that dialogue has begun with Idaho State University regarding the possibility of using that College of Pharmacy for eligible training under grandfather provisions. He pointed out that in order to qualify for the grandfather provisions of this legislation, the applicant has to meet all the criteria and have the criteria proved up to the Commission by December 31, 2012.

**Mr. Eiguren** pointed out that the balance of the legislation sets forth title and scope of practice of licensed naturopathic physicians, and requires that an individual who obtains a license be held out as a licensed Naturopathic Physician or licensed N.M.D. to distinguish them from non-licensed naturopathic physicians. He indicated that among individuals currently licensed in Idaho, two are not capable of meeting the requirements of this legislation. Determination of whether they remain licensed or not would reside with the Commissioner. He also advised that this legislation preempts local units of government from licensing naturopathic physicians, and Idaho has one county currently engaged in such activity. He further

advised that this legislation will sunset in 2015, unless continued by the legislature.

**Ms. Ellis** and **Mr. Eiguren** requested that the Committee send this RS to print.

**Senator Bock** commented that given the volume of this bill, and all of the administrative procedures it obviously would entail, he questions the statement of fiscal impact on the Statement of Purpose. He stated it is his feeling that there are economics involved in this legislation that are somehow not visible. Assuming the bill comes to hearing, he would want to see some discussion about the economics of the whole operation. **Mr. Eiguren** indicated that with input from IBOL, a number of excel spreadsheets have been created that tabulate what fees would be necessary to operate this program, and those will be presented at hearing.

**Vice Chairman Broadsword** noted that when IBOL was before the Committee requesting fee increases, she questioned them as to why the renewal fee was higher than the initial license fee. IBOL advised there are a lot more renewals than initial license applications, and if the Board is going to be solvent they need that renewal fee higher than the actual initial license fee. She asked that the Committee be provided with economic statements supporting that at hearing. **Mr. Eiguren** advised he would provide those.

**Chairman Lodge** asked if there is provision in the bill for dealing with someone who may have been licensed properly in another state and had their license revoked for some reason then moving to Idaho. **Mr. Eiguren** advised that this legislation does not provide for any reciprocity, and therefore, by its terms, we do not allow for naturopathic physicians licensed in other states to come to Idaho and practice as a Licensed Naturopathic Physician. **Chairman Lodge** asked how one might be licensed if they move to Idaho and have graduated from a school outside Idaho? **Mr. Eiguren** responded that they would not be licensed under this legislation. He pointed out that there are constitutional questions associated with that issue. He has engaged in dialogue with the Attorney General's office, but has yet to receive an opinion from them as to whether or not that would be unconstitutional under due process and equal protection. He added the same holds true for having a July 1, 2010, date by which, if you are a resident, to qualify for the grandfather provision. **Chairman Lodge** noted another concern is the terms "doctor" and "physician" are so interchangeable. A "physician" under this bill would have more ability to practice than a "doctor," and that is very confusing.

**Senator Coiner** asked what happens to the licenses that are granted under this bill at the end of five years if the bill is not renewed? **Mr. Eiguren** advised that those licenses would no longer exist – there would be no organic legislation to sustain the ongoing status. **Senator Coiner** asked if the legislation becomes null and

void, would it be advisable to specifically state in the legislation that all licenses granted under the legislation would also be null and void? **Mr. Eiguren** indicated he would have no problems including such language in a redraft. **Senator Coiner** commented that redundancy is a great thing. He also noted language stating the commission “may” use a portion of fees, and asked if that could be changed to “must” or “will” or “shall”? **Mr. Eiguren** responded, he would not object to that type of change. **Senator Coiner** asked if we know we are going to come back and address a lot of these things, why would we want to print this version of legislation? **Mr. Eiguren** stated the reason to print is simply to get it out to a broader constituency so it is on the internet and in law libraries around the state. Then there is more opportunity to look at it, and come back and work on it. **Senator LeFavour** commented that she does think it is beneficial to have this on the internet because there may be issues none of the parties have considered. This opportunity for comment could be very useful.

**MOTION:**

**Senator McGee**, moved, seconded by **Vice Chairman Broadsword**, that the Committee send RS 19613 to print. The motion carried by **voice vote**.

**S 1320**

Relating to the Idaho Legend Drug Donation Act.

**Mark Johnston**, Executive Director, Idaho Board of Pharmacy (IBP), presented S1320. He stated that the Idaho Drug Donation Act was passed in 2009, and tasked IBP with promulgating rules. In writing rules for these statutes, IBP and other interested parties determined that amendments to these statutes were required in order to draft rules that were workable. The purpose of this amendment to *Idaho Code*, Section 54-1761, 54-1762, and 54-1763 is to make changes to these statutes that conform to the rules that were finally negotiated between IBP and other interested parties, and approved by the Health and Welfare Committees of both the Senate and House earlier this year. He advised that the primary change is to allow IBP to promulgate rules that address just one donating entity: nursing homes. Additionally, the requirements of such donations seemed to exclude product that was packaged by a pharmacy in unit dose packaging for use in nursing homes, only including product packaged in the manufacturer’s original packaging. Clarifying language has been added to the Act.

**Mr. Johnston** requested a do pass recommendation for this bill.

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

**Chairman Lodge** commented that she would like to see this legislation expanded to those unopened, prepackaged medications that are in the hands of consumers who are unable to use them.



**MOTION:**

**Senator Bock** moved, seconded by **Vice Chairman Broadword** that the Committee send S1320 to the 14<sup>th</sup> Order for amendment.

**Senator Bock** explained his motion by stating that the sponsor has found that this bill can be made to dovetail better with the implementation of the rules and the legislation if an emergency provision is added to the statute.

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

**ADJOURNMENT:**

**Chairman Lodge** emphasized that no testimony is heard at an RS hearing, but testimony will be taken when the bill is heard. She reminded the Committee members that they are due on the floor at 4:00 p.m., and adjourned the meeting at 3:51 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** February 16, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:05, and welcomed guests.

**H 432** Relating to Immunization Assessments.

**Senator Cameron**, District 26, presented H 432. He stated that last year Governor Otter identified that State general funds were being spent for vaccines of insured children. He recommended that the Joint Finance and Appropriations Committee (JFAC) not spend general fund money on insured children when the insurance companies should be covering this cost. An adjustment was made to the Health and Welfare budget for this, and unfortunately, that decision unexpectedly forced insured children to pay significantly higher prices for their vaccines because the vaccine was no longer being purchased by the State. Some physicians were required to carry two stocks of vaccines, the vaccine for uninsured children which was paid for with federal dollars, and the vaccine paid for by the insurance companies.

Consequently, the Health Care Task Force began studying the Idaho Immunization Program of the Department of Health and Welfare. They requested that the Governor provide temporary funding with stimulus dollars. This provided an opportunity for the Task Force to create a program which would accomplish his goal of not using state funds to pay for vaccine for insured children, while at the same time making vaccines available at the federal Vaccine for Children rate to all children, and allowing physicians to carry one stock of vaccines. This bill is the culmination of the efforts of the Task Force. **Senator Cameron** thanked the Idaho Association of Health Plans, representing health insurers in Idaho, for stepping up to the plate and paying for an attorney who analyzed what provisions could be adopted under law that would meet federal

guidelines. He also thanked the Department of Health and Welfare, the Idaho Medical Association, St. Luke's Regional Medical Center, the Idaho Hospital Association, a number of pharmaceutical companies, and a host of others who donated their time with the Task Force to find a solution.

**Senator Cameron** advised that this bill would create the Idaho Immunization Assessment Board, and authorize that Board to assess all health insurance carriers based on their number of insured children. Those assessments will be deposited in a fund created in the State Treasurer's office which would be used by the State to purchase vaccines for insured children, and thereby allow insured children and the State to benefit from the vaccine purchasing discount available through the federal Centers for Disease Control. He advised that the bill defines "carrier" as traditional plans providing health insurance as well as third party administrators in order to capture those children who are insured under self-funded plans. He stated that under federal ERISA regulations, the State is prohibited from regulating self-funded plans, but is allowed to regulate third-party administrators, and typically third-party administrators run self-funded plans. He stated that there was concern from those who are self funded, however the major business entities have agreed that, although they do not like the State going around the ERISA regulations, they have agreed that in this case it is cost beneficial for them, and it is beneficial to the State, if we can have children immunized at the same level whether they are insured or uninsured. He stated that entities that sell accident only policies, dental insurance, vision insurance, or medicare supplements are excluded from the definition of "carrier."

**Senator Cameron** stated that unless specifically otherwise identified, the term "Director" as used in this bill refers to the Director of the Department of Insurance. He advised that the Immunization Assessment Board will be comprised of nine members. That board will submit a plan of operations to the Director establishing an assessment mechanism to collect the necessary funds. Once that assessment is collected it becomes for all rights and purposes state dollars, thus meeting the federal requirement.

The bill has an emergency clause to address the problem immediately, and allow for the first quarterly assessment April 1, 2010. The bill also provides a three-year sunset clause, which will allow time to evaluate the success of the program.

**Senator Cameron** requested that the Committee send this bill to the floor with a do pass recommendation.

**Senator Darrington** asked if the vaccine will still be held in the offices of physicians and health districts, but they will not have to keep two sets of vaccines? **Senator Cameron** responded that is correct.

**Vice Chairman Broadword** asked where the amount of

assessment is set out in the legislation, and if it is not there, who will determine that, and whether any money needed to fund vaccines this fiscal year will be in that pot of money? **Senator Cameron** stated the amount is not in the act, the Board will determine the assessment from information provided by the Immunization Registry and Department of Health and Welfare. Assessment will be made most likely on a quarterly basis. It is anticipated there may be enough funds to last until April 1, but that is yet to be determined. Additional general funds will not be sought to fill the gap between February 1 and April 1. The industry will monitor closely what the assessment is together with the Department of Health and Welfare. **Vice Chairman Broadsword** noted that the Fiscal Note indicates the Department will be in need of \$1.8 million to complete fiscal year 2010, and asked if the plan is to use funds already in the Department to cover that? **Senator Cameron** stated it is his understanding they will be able to do that internally.

**Senator Coiner** noted he prefers to work with boards of five people or less and asked why this board needs nine members? **Senator Cameron** indicated they started with a lower number and arrived at nine to ensure major carriers in the State would be represented. Third party administrators felt they needed a seat at the table, and they felt it would be helpful to have a primary care physician on the board. He noted that the Senate and House members could have been eliminated, but the feeling was with a new program those seats could help from a legislative standpoint.

**Chairman Lodge** asked if legislative members would be included after an initial two-year term? **Senator Cameron** responded that the bill has a sunset clause, so assuming at the end of three years the statute is reauthorized, it would probably be the intent to leave those legislators as participants. He advised that the two-year term is common for appointments by the Pro-tem.

**TESTIMONY:**

**Denise Chuckovich**, Executive Director, Idaho Primary Care Association (IPCA), spoke **in support** of H 432. She stated that this legislation would impact the 36,000 children under the age of 19 served by physicians within the IPCA. Among those children are uninsured, Medicaid, and privately insured patients, and the goal of IPCA is to provide the same level of care to everyone who walks through the door. She stated this legislation is very much appreciated by IPCA, as it will solve the problem of having to purchase and maintain separate vaccines for insured and uninsured patients.

**TESTIMONY:**

**Dr. Patrice Burgess** spoke **in support** of H 432 on behalf of Idaho Voices for Children. She noted the additional time and expense of maintaining separate vaccines. She stated that a dollar spent now on vaccines saves hundreds or thousands later, and ultimately provides better quality of life.

Supporting documents related to this testimony have been archived

and can be accessed in the office of the Committee Secretary (see Attachment 1).

**TESTIMONY:**

**Corey Surber**, Advocacy and Community Health Coordinator, St. Alphonsus Regional Medical Center, spoke **in support** of H 432. She stated this legislation ensures a universal system of vaccines for Idaho's children. As part of a self-funded plan, St. Alphonsus will be required to help fund private vaccines, but it will also provide St. Alphonsus with the best possible price for vaccines. She noted this is a first step toward improving immunization rates among Idaho's children.

**TESTIMONY:**

**Susie Pouliot**, CEO, Idaho Medical Association (IMA), stated that IMA **strongly supports** H 432.

**TESTIMONY:**

**Dr. Christine Hahn**, Epidemiologist, Idaho Department of Health and Welfare, spoke **in support** of H 432. She stated that this bill will allow the Department's program to streamline the vaccination process, making it easier to ensure that physicians get the vaccines needed.

**Vice Chairman Broadsword** noted the bill states that any assessments imposed or collected shall at all times be free from taxation, and asked if that is standard language? **Senator Cameron** responded that the assessment is essentially a tax. **Vice Chairman Broadsword** asked if those funds will never be taxed even prior to being provided to the assessment? **Senator Cameron** advised this would not relieve them of any tax obligation they would have in insurance premium taxes. It is simply not creating a situation where you would tax the assessment they are paying.

**MOTION:**

**Senator Hammond** moved, seconded by **Senator Smyser**, that the Committee send H 432 to the floor with a do pass recommendation. The motion carried by **voice vote**.

**S 1339**

Relating to Hospital Licenses and Inspection.

**Representative Nonini**, District 5, presented S 1339. He noted **Senator Goedde**, District 4, is a co-sponsor on this bill, and thanked him for taking time from the Education Committee to be present for this hearing. He stated the purpose of this legislation is to allow a hospice agency the ability to build a hospice house as long as certain federal guidelines are met. The legislation would not require that a hospice house be licensed or certified by the State. He clarified his remarks before the Committee at the print hearing, stating that his reference to the State Division of Building Safety should have been a reference to the Bureau of Facility Standards.

**TESTIMONY:**

**Paul Weil**, Executive Director, Hospice of North Idaho, spoke **in support** of S 1339. He explained that a hospice house would provide inpatient care. Sometimes that is not possible, even with hospice care, because of the unmanageable pain. He also stated that in a personal home with hospice care, sometimes the caregiver

just needs a break. A hospice house maintains the inpatient level of care with compassionate care in a design that meets the philosophy of hospice care. That basically is caring for the patient and the family. The hospice house would have family rooms and other spaces dedicated so the family and loved ones can come to that area and be with the patient. He noted that some hospitals have tried to create this kind of environment, but resources are becoming more scarce for hospitals, and they have to put their resources into technology directed towards curative treatment. The hospice house will complement those hospital end-of-life rooms very well.

**Mr. Weil** indicated he began working on this project in 2005, when he realized there was a growing need for this service and hospitals were not planning to add to their end-of-life facilities. Since that time he has talked with many of the parties involved in end-of-life care, and has found most of them receptive of his ideas. He feels that necessary federal regulations have now been put into place, and working through the Hospice Policy Committee within the Idaho End of Life Coalition, he began working with State agencies to pursue establishing a hospice house. He stated he has been in constant contact with **Debby Ransom**, with the Bureau of Facility Standards, trying to work out a way for hospices houses to operate within the state but not put any more strain on the State's licensure system. He stated that placing hospice houses under federal guidelines seems to be the best solution.

**Senator Darrington** asked if the reason for the legislation is a perceived need, rather than reasons or incidents of inadequacy in home based hospice care? **Mr. Weil** responded, it is based on need. **Senator Darrington** asked if the Medicaid and Medicare rules establish adequate separation or boundaries between this level of care and assisted living? **Mr. Weil** responded, "Yes."

**Senator Darrington** noted it is not unusual for those who have been providers to come to the Legislature and seek licensure in various disciplines. He asked if it would be the intent, after some hospice houses are established, to come back to this Legislature and seek licensure. **Mr. Weil** indicated he would defer that question to **Debby Ransom**, but stated his personal opinion that he would not see a reason to because federal regulations are significant enough from a life safety standpoint to protect the patients and ensure they receive quality end-of-life care.

**Chairman Lodge** commented that she was surprised to see we needed legislation to do this, as she had experienced visiting a friend who resided in a hospice house several years ago. She noted that she found it to be a pleasant place, and probably one of the most important features was a pet cat which really kept the patients content. She indicated she had recently read a vignette about a cat who could predict death in nursing homes.

**TESTIMONY:**

**Debby Ransom**, Bureau Chief, Bureau of Facility Standards, Division of Medicaid, Department of Health and Welfare, spoke in

**support** of S 1339, stating that it is a win-win concept. She addressed **Senator Darrington's** comments, stating that if a hospice house in Idaho is federally certified, she would not see them coming forward and electing state licensure. It would be redundant, and that is why it is such a win for Idaho, it does not require State resources or dollars.

**Representative Nonini** thanked the Committee for hearing this bill and testimony and requested a do pass recommendation.

**MOTION:**

**Senator Hammond** moved, seconded by **Vice Chairman Broadsword**, that the Committee send S 1339 to the floor with a do pass recommendation. The motion carried by **voice vote**.

**RS 19172C2**

**Chairman Lodge** advised the Committee that a bill was omitted from the agenda yesterday that should have been timely acted on. She apologized for the oversight of a bill that was originated by the Health and Welfare Department relating to childcare, and asked the committee how they would like to handle RS 19172C2.

**Senator McGee** asked unanimous consent that the Committee send RS 19172C2 to a privileged committee to be printed and returned to this Committee. **No objection was voiced**.

**Senator Darrington** indicated that perhaps his secretary could add that to tomorrow's agenda in Judiciary and Rules, and if not it can be done on Friday.

**MINUTES:**

**Senator McGee** moved, seconded by **Vice Chairman Broadsword**, that the Committee accept the minutes of the January 26, 2010 meeting as written. The motion carried by **voice vote**.

**ADJOURNMENT:**

**Chairman Lodge** advised there would not be a meeting on Wednesday, February 17, and Thursday, February 18. She reminded the Committee of the tour of the prison CAPP facility on February 17 and stated vans will be in front of the Statehouse at 3:45 p.m. She requested anyone wishing to participate in the tour let her know so the appropriate transportation can be provided.

She advised the Committee that she will appear before JFAC on Thursday, February 18, and anyone having suggestions for her presentation should let her know.

**Chairman Lodge** advised this is the last meeting for the Committee's Page, Elise Knapp. Elise is from Parma, **Senator Smyser's** district. **Chairman Lodge** thanked Elise for the tremendous job she has done for the Committee, and for always greeting everyone with a smile. She complimented Elise on her musical ability and wished her well in her chosen career of musical theater. Elise was presented with a gift from the Committee and letters of recommendation.

**Senator Darrington** introduced his daughter, Kae Cameron, who

attended the meeting with the Board of Directors of the Mini-Cassia Chamber of Commerce.

There being no further business to come before the Committee, the meeting was adjourned at 3:52 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary



## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 22, 2010
- TIME:** 3:00 p.m.
- PLACE:** Room WW54
- 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.
- CONVENED:** **Chairman Lodge** called the meeting to order, and welcomed guests.
- MINUTES:** **Senator Bock** moved, seconded by **Senator McGee**, that the Committee accept the minutes of the January 27, 2010, meeting as written. The motion carried by **voice vote**.
- Vice Chairman Broadsword** moved, seconded by **Senator McGee**, that the Committee accept the minutes of the January 28, 2010, meeting as written. The motion carried by **voice vote**.
- Senator Coiner** moved, seconded by **Vice Chairman Broadsword**, that the Committee accept the minutes of the February 1, 2010, meeting as written. The motion carried by **voice vote**.
- S 1362** Relating to Prevention of Minors' Access to Tobacco and Permitting of Tobacco Product Retailers.
- Senator Elliot Werk**, District 17, presented S 1362. He stated that Idaho does not currently charge a fee for the permitting and inspection of tobacco dealers. This results in annual expenditures of about \$94,000 from Millennium Funds and approximately \$200,000 from general funds to subsidize tobacco dealers. To end the taxpayer subsidy of tobacco dealers, this legislation requires the Department of Health and Welfare to promulgate rules to recoup the costs of annual permitting and inspection of tobacco dealers. He stated that the average cost for permitting and inspection is around \$140, and retailers could pass that cost on in the price of tobacco products so that the users pay the fee and not the taxpayers. He advised that this legislation would not apply to tobacco dealers on Indian Reservations. He stated that in the current budget crisis the

Department of Health and Welfare can certainly better use the \$300,000 currently required for permitting and inspection of tobacco dealers.

**Senator Werk** requested that the Committee send this bill to the floor with a do pass recommendation.

**Vice Chairman Broadsword** questioned the language of the Statement of Purpose for this legislation indicating tht Millennium Funds are used to prevent minor's use of tobacco, but are not used to pay inspection and permit fees for dealers. **Senator Werk** indicated that the inspections are provided by Idaho State Police (ISP), and the Millennium Fund provides the counter marketing piece for ISP to go out and do inspections, while the Department of Health and Welfare, who is responsible for the program in statute, spends taxpayer funds to cover the rest of the program. **Vice Chairman Broadsword** asked if tobacco users are not already paying for the inspection and permitting with tobacco taxes collected by the State? **Senator Werk** advised that \$200,000 required for this program is taxpayer funds because those tobacco taxes are not flowing into that program. He added that if you look at the overall big picture cost to the State for tobacco related diseases, the costs far exceed the amount of money that comes in as tobacco taxes. **Vice Chairman Broadsword** commented that while she agrees that tobacco taxes don't cover the ultimate cost that the State incurs, she struggles with adding an extra burden on our small businesses and perhaps we need to reassess where the current tobacco tax dollars are going and perhaps cover this. **Senator Werk** indicated that is a valid point, and he understands the concern, but the retailer has the freedom to pass the cost of the permit on to the user.

**Senator Darrington** stated that all retailers are not created equal, and he is concerned for the small "C" stores who have walls plastered with permits and licenses. He stated that some retailers have low volume and must compete with high volume establishments. **Senator Werk** emphasized that the inspections and permits are required now and it will not change the amount of hardware on the wall in a store. He stated that what we are talking about here is whether it is the proper role of the taxpayers of the State of Idaho to pay the cost of inspections and permitting for retailing tobacco products in the State.

**Senator Hammond** commented that the smoker's in this state, through the tobacco tax, are paying for the \$120 million Statehouse renovation. He stated that he feels that is a good trade, and will be happy to subsidize these inspections. **Senator Werk** noted that when you look at the overall cost of smoking related illnesses and other costs of tobacco use, and compare that cost with tobacco taxes that get diverted into upgrading the Capitol, we do not nearly cover the cost. **Senator Hammond** asked how the issue of recovering cost that is incurred by smoking relates to this legislation? **Senator Werk** stated that if we are talking about

whether or not tobacco taxes go toward this particular program then we need to be thinking about whether the taxes cover the overall cost. He added that If the tobacco program was on its own and needed to have a balanced budget, the budget would not be in balance by more than \$30 million a year. He stated he could bring a bill that would say tobacco taxes would be used for inspections and permitting, but would be asking for \$200,000 to do that.

**TESTIMONY:**

**Charley Jones**, President and majority owner, Stinker Stores, spoke **in opposition** to S 1362. He stated there are 38 Stinker Stores in Idaho with 430 employees. Stinker Stores have been in business in Idaho for 70 years and hope to remain a vibrant part of the Idaho economy for years to come. He advised that at \$150 per licensed location, this bill will cost his company \$7,200 every year. He advised in calendar year 2009 Stinker Stores paid nearly \$2,750,000 in Idaho excise taxes on cigarettes and tobacco, and another \$900,000 in sales tax on those same products. Combined taxes paid by Stinker Stores on this one sales category generated \$3,650,000 for the state of Idaho. In preparing for this testimony **Mr. Jones** stated he looked up the word “subsidy,” and found the definition to be: “a grant or gift of money from a government or private company, organization or charity to help it function.” He stated that if there is a subsidy from the State of Idaho to market cigarettes and tobacco, Stinker has not received it. He indicated the great recession that we are trying to dig out of now has caused him to look for additional revenue and expense savings in every place he can think of. He requested a no vote on this bill.

**TESTIMONY:**

**Pam Eaton**, representing Idaho Retailers Association, spoke **in opposition** to S 1362. She stated she agrees with the comments of **Mr. Jones** noting that this is a tough economy and a lot of small retailers are fighting to keep their doors open and people employed. She advised that by her calculations the cost spread among current retailers would be more than \$180 per business, and it is not always able to pass this cost on in a small business. She commented that retailers in the area of Indian Reservations are at a great competitive disadvantage with the Tribes not being required to share in this cost. She stated tobacco products take extra handling, and although retailers may prefer not to handle tobacco products because of the cost, in order to remain competitive, they must.

**Senator Werk** thanked those who testified, and pointed out if someone is remitting \$2,750,000 in direct product taxes they are selling a lot of tobacco. He indicated the issue of Tribes not being taxed is a much bigger issue than what we are talking about here.

**MOTION:**

**Senator LeFavour** moved that the Committee send S 1362 to the floor with a do pass recommendation. The motion **failed for lack of a second**.

**MOTION:**

**Vice Chairman Broadsword** moved, seconded by **Senator Coiner**, that this bill be held in Committee. **Vice Chairman Broadsword** explained that while she agrees we need to address

the high cost of end-of-life care for those who smoke, she does not feel this is the way to address it. She stated we should be looking at additional tobacco taxes with express language to send the money to Medicaid.

**Senator LeFavour** spoke **in opposition** to the motion. She stated this has been a year full of discussion about user fees and we have in many instances shifted the cost of government services to those who use them. She stated that this does not pale in comparison to those instances at all in terms of taxpayers subsidizing what essentially is smokers. She feels it is very reasonable to put this bill forward and that it fits well with many of the things this Committee has done this year.

**VOTE:**

**Chairman Lodge** called for a vote on the motion to hold the bill in Committee. The motion carried by **voice vote**, with **Senator LeFavour** voting “**Nay.**”

**S 1363**

Relating to Dissolvable Tobacco.

**Senator Werk** presented S 1363. He provided the Committee with an advertisement related to dissolvable tobacco (see Attachment 1). He stated that tobacco companies are currently test marketing dissolvable tobacco that resembles breath mints and strips in select locations around the United States. This legislation bans the sale of dissolvable tobacco (under penalty of misdemeanor), unless prescribed by a licensed health care professional, to ensure that this nicotine delivery product is not sold over the counter in Idaho. He stated that the health care professional exception was added in the event this product is desirable for use in tobacco cessation. He provided samples of the tobacco product and explained that it is finely ground tobacco packaged to look like candy, breath strips and mints. It contains between 60 and 300 percent of the nicotine delivered by cigarettes and has the same health risks as any tobacco placed in your mouth. He reviewed the packaging and potential for children to obtain toxic doses. He stated dissolvable tobacco is being marketed heavily to teens, and the reality is that this type of product is the entry into the world of tobacco or nicotine addiction.

**Senator Werk** requested that the Committee send this bill to the floor with a do pass recommendation.

**TESTIMONY:**

**Pam Eaton**, representing Idaho Retailers Association, spoke **in opposition** to S 1363. She stated that this is a legal product in neighboring states, and to make it illegal in Idaho would be detrimental to retailers along state lines. She stated that when a consumer goes across the State line to make a purchase they often purchase other items at the same time. Another concern of the Association is that the clause exempting health care professionals could ultimately increase health care costs.

**Senator Bock** asked what position the Idaho Retailers Association

would take should the neighboring states of Oregon or Washington enact a law that legalizes marijuana? **Ms. Eaton** advised that marijuana has never been a legalized product in Idaho, and therefore, Idaho would not have consumers to lose to a neighboring state. She added that marijuana would not be found in convenience stores and grocery stores even if Oregon and Washington were to legalize it. They are looking at opening various entities for that product with physician oversight.

**Vice Chairman Broadsword** stated it is her understanding that the federal Food and Drug Administration (FDA) now regulates this product. She asked if we would be preempting federal law should Idaho choose not to sell this product? **Ms. Eaton** responded that on this type of issue it is her belief that the state can go more stringent than the federal government.

**TESTIMONY:**

**Steve West**, representing R.J.Reynolds Company, spoke in **opposition** to S1363. He stated that he agreed with comments of **Ms. Eaton**. He advised that dissolvable tobacco is a legal product. It has been available in the United States for over eight years and is currently available in the State of Idaho. This product is taxed at the same rate as other smokeless tobacco products. Alternatives to dissolvable tobacco products are being test marketed in Ohio, Oregon, and Indiana, for a product line being developed by the R.J. Reynolds Company. Compared to other smokeless tobacco products, these products contain less nicotine. They are not a smoking cessation program, and they are not a tobacco cessation program. They are a legal tobacco product developed for adults who choose to use tobacco.

**Mr. West** advised that these products have been developed in accordance with the Master Settlement Agreement entered into in 1998 between the tobacco companies, the federal government, and the states. He stated that the sale of this product is restricted; it is placed behind the counter, and requires a face to face transaction with a retail clerk. He considers the packaging restrictions used to be superior to most of those in the industry. He advised that FDA is the agency charged with evaluating the scientific review of tobacco products and determining how they should be marketed and in what cases they should be banned on a national level. The Master Settlement Agreement is specific as to how tobacco products are to be marketed to adults, and he is not aware of any scientific basis which the State could use to justify prohibition of dissolvable tobacco. He estimates the product could generate between \$250 million to \$300 million in sales revenue based on similar new smokeless tobacco products that have been developed and marketed. He stated that selective prohibition is a poor public policy, and there is no basis to prohibit dissolvable tobacco over other types of tobacco products. He commented that the Legislature should take some comfort in the fact that there are safeguards in place to protect public health under the Master Settlement Agreement, and this type of action is neither warranted nor

necessary.

**Senator LeFavour** asked whether nicotine is a drug? **Mr. West** responded that Congress and the FDA treat it as a drug. **Senator LeFavour** commented that the FDA has honored the tradition of smoking and chewing tobacco in the United States, but this is a very different form and does not fall into either of those categories. She stated she is not sure we consume a lot of other drugs without prescriptions, and asked if there is some way dissolvable tobacco is defined to keep it from simply being another drug? **Mr. West** advised that in addition to products containing caffeine, there are numerous products such as aspirin that are classified as drugs. He added he is comfortable that the current regulatory structure of the federal government within the FDA, under the auspices of the Master Settlement Agreement, contains provisions and guidelines that would allow the FDA to determine what the appropriate level of regulation for dissolvable tobacco is.

**Vice Chairman Broadsword** stated that one of **Mr. West's** competitors provided the Committee with written testimony on this issue (see Attachment 2). According to it, the City of New York passed an ordinance that banned the sale of smokeless and other flavored tobacco products, and they are now being challenged in the court because they preempted the FDA Advisory Committee on Family Smoking Prevention and Tobacco Control Act. She asked if he was familiar with that action? **Mr. West** advised he is not aware of that case. **Vice Chairman Broadsword** asked if his company would also consider suing if Idaho restricts this product? **Mr. West** advised that there has never been any discussion he is aware of regarding any company he represents suing the State of Idaho. He added that his issue in opposing this bill is purely that it is a legal product and there is no justification for making it illegal specific to the State of Idaho.

**Senator Bock** indicated that in looking over the sample package, he does not see any indication that the product contains nicotine, and asked if the product does contain nicotine? **Mr. West** responded that it does and labeling is in accordance with the requirements of the Master Settlement Agreement. **Senator Bock** stated that nicotine is a very highly addictive drug, and asked how anyone could say this product is not particularly dangerous to the State of Idaho. **Mr. West** indicated what he said is that the conventional collective wisdom of the federal government, and to a large extent the states, indicates it is reasonable for adults to have access to tobacco products should they decide to utilize them. Risk is basically a probability. Every action carries with it a risk, and everything we do may well be a threat to the State of Idaho.

**Senator Bock** commented that even though the testimony is that this product is only being marketed to adults, he does not see how a reasonable person could say that the package is not really attractive to kids. **Mr. West** advised that tobacco companies are following the requirements of the Master Settlement Agreement in terms of their

marketing strategies, and they are not in any way trying to make them attractive to children. He stated that the laws that are currently in place provide sufficient deterrent to minors who chose to break those laws or adults who chose to break them by providing minors access to tobacco.

**Senator Werk** stated that although we have all kinds of other tobacco products, we need to make a decision as to whether or not we want this specific delivery system within the State of Idaho. This is an instrument; it is a method or form of delivering an agent, and no different from what the Legislature did in terms of the instrument for delivering inhalable alcohol. He stated that Idaho should be making decisions that are best for Idaho citizens, and asked the Committee to prohibit the sale of these products because they are meant as an introduction for young people to become addicted to nicotine, and thus begin a life-long tobacco habit. He added that Legislative budget writers suggested the inclusion of language exempting licensed health care professionals, and he does not believe this product will ever be used for smoking cessation. He indicated that language could be amended out if the Committee wants to send this bill to the Amending Order.

**Senator Darrington** stated we have a lot of high school kids running around this State with a ring in the back pocket of their pants from chewing tobacco, which they procured illegally, and asked why a ban on chewing tobacco was not included with this legislation? **Senator Werk** stated that he does not see much good about tobacco products in any form, and personally would ban them all, but there are legal products on the market. He indicated that this particular delivery system is the kind of delivery system that appeals to teens. It is easy to conceal, easy to consume, still deadly, can lead to life-long tobacco use, and something that is coming toward Idaho. He wants to give the Legislature the opportunity to weigh in on whether or not this product should enter our State.

**Senator Hammond** stated he is not crazy about tobacco products, dislikes walking into an establishment that still allows smoking, and dislikes walking into a building where smokers are standing right outside the building. He asked if **Senator Werk** would agree that smokers are going to smoke regardless of how much education we provide? **Senator Werk** responded, yes, there will always be a group of people who do things that may not be in their best interest. **Senator Hammond** commented: "Recognizing neither one of us want to be around that smoke, why wouldn't we want to provide them an alternative product that, even though it is not healthy for them, at least we non smokers do not have to endure second hand smoke." **Senator Werk** indicated his point was a good one, but there are many alternatives for people that do not have the opportunity to light up a cigarette.

**MOTION:**

**Senator Coiner** commented that the package reminds him of packaging that was done for candies. It would be easy to conceal

and easy to consume. He does not feel it is a good product, and is marketed toward youth. He moved, seconded by **Senator Bock**, that the Committee send S 1363 to the floor with a do pass recommendation.

**Senator LeFavour** stated it would be difficult to overdose on cigarettes or chewing tobacco, but at risk teens she has worked with would have no problem opening these packages, and there could be dire consequences.

**Senator Smyser** declared she has a possible conflict in accordance with Rule 39.

**Senator LeFavour** requested a roll call vote.

**VOTE:**

**Chairman Lodge** requested the secretary call the roll on the motion to send S1363 to the floor with a do pass recommendation. The results of the vote were: **Senator Bock**, aye; **Senator LeFavour**, aye; **Senator Smyser**, aye; **Senator Hammond**, nay; **Senator Coiner**, aye; **Senator McGee**, nay; **Senator Darrington**, aye; **Vice Chairman Broadsword**, nay; **Chairman Lodge**, nay. The motion passed with 5 “ayes,” and 4 “nays.”

**CHANGE OF  
VOTE  
REQUEST:**

**Senator Smyser** requested that she be allowed to change her vote. **Chairman Lodge** requested parliamentary advice from **Senator Darrington**, who advised that “a parliamentary decision made by the chairman is appealable to no one, Rule 632, Mason’s Manual. So the chair can rule either way, and the decision can be appealable to no one.” **Chairman Lodge** allowed **Senator Smyser** the opportunity to change her vote. **Senator Smyser** requested that her vote be changed from “aye” to “nay.”

**REVISED VOTE:**

**Chairman Lodge** announced that the motion to send S 1363 to the floor with a do pass recommendation **failed**, with 4 “ayes,” and 5 “nays.”

**PRESENTATION:**

Governor’s Behavioral Health Transformation Report.

**Skip Oppenheimer**, Chair of the Behavioral Health Transformation Work Group (BHTWG), introduced members of BHTWG in the audience. He stated that BHTWG originated from an Executive Order encapsulating the purpose of BHTWG, which is to develop a plan for a coordinated, efficient state behavioral health infrastructure, to provide for stakeholder participation, and to present its plan to both the Senate and House Health and Welfare Committees and the Legislative Healthcare Task Force. He stated that this project came about because of a number of studies and analyses over the last several years that continued to point out the same issues that relate to the appropriate mental health care for citizens in need in Idaho. He stated BHTWG feels a profound responsibility to try to actually move this process forward and address the need to improve the delivery of mental health care and substance abuse services to the citizens of the State of Idaho.



BHTWG used material from studies and reports, including those generated by the Western Interstate Commission for Higher Education (WICHE), to develop a system where mental health and substance abuse services are integrated. He provided the Committee with an Interim Status Report (see Attachment 3), which has been presented to the Governor, detailing the results of BHTWG's effort to date. The Report outlines BHTWG's vision for the future, proposes steps for moving in that direction, and a process for developing its final strategic plan. He advised that the Department of Health and Welfare supports BHTWG's vision and goals, and that the strategy created may move the State more in the direction of a managed care environment rather than fee for service.

**Mr. Oppenheimer** introduced **Richard Armstrong**, Director, Department of Health and Welfare, who reviewed Phase One of BHTWG's plan. Phase One begins with a reorganization initiated and completed by the Department. That reorganization would be complimented by regional authority, responsibility and accountability for the Regional Mental Health Boards. He stated the plan calls for a pilot program in Eastern Idaho integrating the admission and discharge process between mental health clinics and State Hospital South. This will provide a single point of control over inpatient and outpatient cases. The plan will eventually be expanded into three regions of the state under the overview of the three State hospitals. He advised that to expand beyond where we are today with the current budget will be impossible, but BHTWG's goal is to have the right structure in place so as the economy improves we will be able to fully implement the plan. He advised that the Department will need to continue to evaluate the process from a funding and staffing perspective in the short term, however as the system evolves, it is anticipated that the responsibility, authority and accountability of regional administrators will increase.

**Vice Chairman Broadword** asked if the Department would be going from being the payor and the one who determines what the program is to being the payor with someone else in charge?

**Director Armstrong** responded that the Department would remain the administrator and guarantor of funds, and will control the quality and program integrity. He indicated that with the current compressed budget, the Department will move from daily care to crisis management. As we come out of the budget crunch, instead of growing the State's capacity to be the direct care giver, this model would allow the private sector to be more of the care giver, but the Department would be the controller of the purse as well as the quality of the product delivered.

**Senator Lefavour** asked if the system will be designed so that it does not wait until people are in extreme need, but allows for every range of service that may be preventative with early intervention?

**Director Armstrong** indicated that the Department's long view is that it would contract with managed care entities that would be responsible for delivering the full scope of services, and that is why

core services are being carefully defined. That way everything from prevention to delivery to followup will be the responsibility of the local entity that is contracting with the State. He added It is not the Department's intention to move to a fee for service reimbursement method, because that simply has not been successful from a budget management nor from a continuum of care quality standpoint. As was recommended through the WICHE report we would move from a risk based arrangement, and that may or may not be with a for profit company. It could very well be with a not for profit entity.

**Mr. Oppenheimer** then reviewed the subsequent phases which are anticipated to generate infrastructure, data and experience, including:

- an effective data gathering system;
- statewide quality standards for an outcome-based system;
- evolution of regional bodies and capacity; and
- a pilot project in one region to inform the effective implementation of future efforts.

He stated that WICHE will continue to provide technical assistance in reviewing current recommendations and will respond at a meeting scheduled for March 24 and 25, 2010. He indicated that meeting would be attended by several regional and national experts in this area and a formal invitation would be extended to the Committee to attend that presentation. He stated that subcommittees are actively working in the areas of identifying core services, strategic plan development, and public outreach. He advised that BHTWG is budgeting its funds to support: (1) systems change activities; (2) regional capacity building; (3) outreach; and (4) technical assistance. **Mr. Oppenheimer** stated the success of this project will depend upon bi-partisan commitment and good communication between the parties. He invited suggestions and comments from the Committee at any time.

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

**Chairman Lodge** thanked **Mr. Oppenheimer** and **Director Armstrong** for their presentation and indicated the Committee should take time to review the materials presented.

**Vice Chairman Broadsword** noted the cost estimate of more than \$255 million, and asked if we are putting that amount in a rat hole, or is it doing some good? **Mr. Oppenheimer** indicated he feels given the resources BHTWG has, it is doing a good job. He added that currently it is not easy for a person in need to access the system. Often the cases have to be severe to even get treatment, because of the lack of available services throughout the State. BHTWG is working hard on a more integrated delivery system that is community based, and yet the Department and other departments

affected can manage the process effectively and make it more easily accessible.

**Senator McGee** conveyed his appreciation to **Mr. Oppenheimer** and other volunteers on BHTWG for the time they give to this project and complimented the work to date.

**Senator LeFavour** noted the challenges of providing services to people who do not yet have a diagnosis or are in the early stages of mental health issues and do not qualify for medicaid. She asked if BHTWG has approaches to providing those services in a way they are affordable so they use them, as it saves the State money in the long run? **Mr. Oppenheimer** indicated that is a function to some extent of how the system is designed and organized, but it is also to some extent a function of available funding. **Chairman Lodge** invited **Margaret Henbest**, a member of BHTWG to respond to the question. She indicated BHTWG acknowledges the fragmentation of our current services. In order to get rid of that fragmentation BHTWG is proposing to provide community based core services that have continuity from people who are just beginning to struggle with an emerging illness or overwhelming stresses in their lives to people who have a significant mental health diagnosis that they are clearly going to have to be managing for their entire life. The challenge as we reach out for public comment is to try to communicate.

**PRESENTATION:**

Annual Overview by U S Ecology Corporation.

**Roy Eiguren**, representing U S Ecology Corporation, indicated each year U S Ecology Corporation provides the Health and Welfare Committee with an overview of company operations as well as the hazardous waste facility. He introduced company principals for the presentation of its 2010 Legislative Report.

**Jim Baumgardner**, CEO, stated that American Ecology has officially changed its name to U S Ecology. He provided an overview of the company's operations. He stated the company reduced its work force by approximately 40 employees. Hazardous and Radioactive Waste materials management services are provided to industry and the U.S. Government. The company's base business comes from recurring production, and the event business is the clean-up business. He stated that the mission of U S Ecology is to provide safe, secure and cost-effective hazardous and radioactive materials management solutions to industry and government while creating sustainable shareholder value. The company is a strong and stable company ending the year with over \$30 million in cash and no debt.

**Simon Bell**, Vice President of Operations, reviewed U S Ecology's Idaho economic impact for 2007, stating that the company provided 302 jobs at wages 17 percent higher than local averages. He indicated that all capital spending is maintained with Idaho

companies, adding that we are blessed to have some of the best companies in America located in Idaho. He provided information on the volume of waste, indicating that volume was down during 2009. He advised that because of this decline, State and county fees are also down. He indicated a small decrease is predicted for 2010.

**Terry Geis**, Idaho General Manager, reviewed the layout of the Grand View site. He noted the company is highly regulated and works closely with the Idaho Department of Environmental Quality as well as the Environmental Protection Agency. He stated the company has a superior safety record. U S Ecology not only assists the community with hazardous waste collection, but awards \$15,000 annually to local non-profit organizations.

**Mr. Baumgardner** concluded the company's remarks with an overview of the 2010 outlook, stating that the bottom line is that company wide volumes, revenue, and earnings are expected to be lower in 2010. He stated that U S Ecology is committed to being a good corporate citizen, and is committed at every level of the company to protect the people and protect the environment.

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

**Chairman Lodge** pointed out that U S Ecology is the biggest employer in Owyhee County at this time, and thanked the principals for their presentation today.

**ADJOURNMENT:**

There being no further business, **Chairman Lodge** adjourned the meeting at 5:15 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 23, 2010
- TIME:** 3:00 p.m.
- PLACE:** Room WW54
- 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.
- CONVENED:** **Chairman Lodge** called the meeting to order at 3:00, and welcomed guests. She introduced the Committee's new pages, Kelsey Kinkle and Evan Lantzy. To treat the Committee for their diligent work in timely reviewing rules, **Chairman Lodge**, arranged for an appearance by Boise & Broadway, a quartet from the Boise Cordsmen. The Committee and guests all enjoyed the musical entertainment.
- PRESENTATION:** Relating to Department of Juvenile Corrections Overview.
- Sharon Harrigfeld**, Director, Idaho Department of Juvenile Corrections (IDJC), stated that with the assistance of a truly incredible work force and their work with juveniles, families, and community partners, IDJC has achieved meaningful outcomes. She advised she has been involved in the juvenile justice system in Idaho for 29 years. She has watched the system change from one that was fragmented and unequally distributed in 1960, to the balanced system it is today, protecting the community, holding offenders accountable, and improving their ability to become happy and productive individuals with a focus not only on the offenders, but also the victims and our communities. Today IDJC has a system of people working together to solve issues, and the ability to track juveniles through the continuum of care. She thanked the Committee for its insight and support in helping develop this complex but effective system.
- She provided a map of regional service delivery, and latest data on juveniles and their involvement in the juvenile justice system. She stated the majority of juvenile offenders are served in the community on probation, and noted that a community, through proactive efforts with its youth, has the greatest potential to positively impact and divert those youth from the juvenile and adult correction system.

The IDJC system looks to improve outcomes of juvenile offenders by knowing they are capable of change, focusing on their aspects and areas of resiliency, and helping them cultivate a pro-social and drug free identity. She indicated studies show 72 percent of juvenile offenders in the program have not committed another criminal act at the end of a 12-month followup.

**Director Harrigfeld** advised that IDJC's partnerships with communities, the judiciary and other state agencies are critical to its system and provide additional depth to identify strengths and needs of the system. She stated the Detention Clinician Initiative which brought together the strengths of the Departments of Health and Welfare (DHW) with its expertise in children's mental health, and the strengths of IDJC has been very successful. Research indicates not only were 86% of the juveniles screened identified with mental health issues, but it found that 100% of the detention administrators noticed a decline in the number of restraints and incident reports within their detention facilities. The facilities also have seen an increase in the competency and confidence of their staff and want the Detention Clinician Initiative to continue.

She advised that Idaho Juvenile Rule 19, which provides legal guidance for juvenile court judges to use in deciding whether or not to commit a juvenile offender, was amended in 2009 to require a screening team to consider risk to the community, needs of the juveniles and family strengths and commitment to working with a community based program. As a result of that screening, 52 percent of the juveniles going through the program were diverted and 86 percent of those diverted have remained out of IDJC custody. The projected cost avoidance for one year due to this program is estimated to be \$7.5 million. She asked the Committee to take time to look at children in their communities and figure out ways to support them through churches and community programs.

**Director Harrigfeld** advised that IDJC's Case Management process has been developed in pieces and parts over the past 15 years. With much time and energy contributed by staff, the Case Management system is being refined with a goal of building a single case management system based upon collaboration, communication, continuity and accountability.

She concluded her remarks by equating the juvenile justice system to a small farm community where everyone is supportive. She indicated IDJC is an amazing system that the Committee helped create, and with the help of the judiciary and communities its harvest has been successful.

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

**Senator LeFavour** asked if the Detention Clinician Initiative is at

risk this year? **Director Harrigfeld** responded, "No."

**Vice Chairman Broadsword** noted she heard a recent newscast indicating problems at the Bonner County Juvenile Detention Center might result in closure. She asked for an update on that situation.

**Director Harrigfeld** indicated the Bonner County Detention facility is one of the 12 facilities monitored by IDJC for compliance with state and federal standards, and a new facility is needed in Bonner County. IDJC looked at the facility in December to provide them with guidance. The facility has until September 2010 to submit a corrective action plan to make sure the residents are safe. **Vice Chairman Broadsword** indicated the existing facility is in an old house and it is her understanding the County Commissioners have rejected a new facility. She asked if consideration had been given to renovating the old Bonner County Jail and Courthouse for this purpose? **Director Harrigfeld** indicated IDJC helped get a consultant to look at that facility, and she is not certain, but thinks they felt it would be more cost effective to build a new facility. She indicated she would provide a copy of the consultant's report.

**Senator LeFavour** noted the large portion of mental health and substance abuse diagnoses identified in the juvenile justice population, and asked if there are opportunities to provide services to schools that would be effective in prevention. **Director Harrigfeld** advised that work with the schools reduces the number of kids that come into the juvenile justice system. She indicated she is a member of the Behavioral Health Transformation Work Group, and one of the things they are working on is the full continuum of care. She advised they are looking at best practice programs, and it may be that the model would be different in Bonner County than it would be in Ada County. It will involve providing a menu of services to the schools to be able to help them.

**Senator Smyser** indicated she has worked with **Director Harrigfeld** on several projects, and thanked her for her work in the schools and leadership in the juvenile justice system.

**Senator Darrington** recognized **Monte Prow**, Research Analyst, IDJC, who helped with the presentation. He noted Monte has completed tours of duty in Iraq and Afghanistan, and in addition has provided remarkable service to IDJC. **Director Harrigfeld** acknowledged **Mr. Prow** and the service he provides IDJC. **Mr. Prow** expressed thanks for the recognition and noted it is good to be back and to be a part of something bigger than yourself, which he indicated is not only true of his work with the Department of Defense, but also with IDJC. **Chairman Lodge** thanked **Mr. Prow** for his service to our nation and to our State.

**Senator Darrington** noted the drop in the juvenile population that has occurred in a relatively short period of time, and stated it is probably due to the implementation of Rule 19. **Director Harrigfeld** agreed, stating that the partnerships IDJC has created with the

judiciary, counties and communities, together with a great relationship with the Department of Health and Welfare and faith communities has helped with the reduction and led to a cost avoidance of \$7.5 million. **Senator Darrington** indicated that is an incredible development that no one could have anticipated, but it does not lessen the need for IDJC to have the resources to support the counties.

**Senator LeFavour** offered an apology for budget cuts the Legislature has had to implement this year.

**Chairman Lodge** added that the budget cuts are not pleasant. She noted **Director Harrigfeld** has taken drastic measures to try to keep things on track, and extended her appreciation. She advised the Committee to visit the Nampa, St. Anthony, or Lewiston facilities to see the great work that is being done. She thanked **Director Harrigfeld** for her presentation.

**GUESTS:**

**Chairman Lodge** recognized and welcomed a group of students from Jefferson Montessori School in Rigby, Idaho, who are observing the legislative process.

**S 1335**

Relating to Immunization.

**Susie Pouliot**, CEO, Idaho Medical Association, presented S 1335. She advised that Idaho ranks behind nearly all other states in childhood immunization rates. This legislation seeks to raise those rates in our State by expanding use of the Immunization Reminder Information System (IRIS) by physicians and other health care providers. She stated that by changing the IRIS registry from an opt-in program to an opt-out program, more robust information regarding a child's immunization status will be available to health care providers. She emphasized that changing IRIS to an opt-out program does not in any way change the voluntary nature of the current registry, nor does S 1335 mandate vaccinations for those who choose not to have their children immunized. Parents who do not wish to have their children's data included will still have the right to opt out of the system.

She stated that an opt-out IRIS system is more efficient and cost effective because it will require less time and effort to assist the minority of individuals who choose to opt out, rather than go through the consent process for every single patient. In addition, an opt-out system will more readily integrate with existing Electronic Health Record (EHR) Systems, and allow providers a greater ability to manage the immunization status of their patients. Currently providers must purchase a unique software patch to connect their EHR systems with IRIS. She advised that physicians of Idaho and other health care organizations strongly support this bill.

In response to a question at the print hearing from **Vice Chairman Broadsword** relating to costs savings, **Ms. Pouliot** advised that IRIS may not provide a direct link to a corresponding reduction in



costs for Medicaid, but she provided the Committee with information related to vaccine-preventable diseases which had been prepared by **Dr. Christine Hahn**, State Epidemiologist.

**Ms. Pouliot** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**Vice Chairman Broadsword** commented she has heard there is a resurgence of polio across the world, and since this was once almost wiped out, to see a resurgence is very disturbing. She asked if this has been seen in Idaho? **Ms. Pouliot** responded that she did not have that information, but **Rebecca Coyle** from the immunization program may have some of that information.

**Senator McGee** asked that **Ms. Pouliot** confirm that this is still a voluntary program. **Ms. Pouliot** advised that we currently have a voluntary opportunity for parents and individuals who are immunized and have their children immunized to have that information entered into the system. With this legislation it still remains a voluntary program; individuals maintain their right to not have their information included in the program.

**Senator Darrington** asked if this opt-out with the IRIS system is generally for those who choose to be immunized but do not want to be on the registry? **Ms. Pouliot** stated that is correct.

**Senator Smyser** asked how the system works with the people who are already immunized? **Ms. Pouliot** deferred the question to **Rebecca Coyle**.

**TESTIMONY:**

**Rebecca Coyle**, Program Manager, Immunization Program, Department of Health and Welfare, spoke **in support** of S 1335. She stated that she has seen personally some of the challenges of the current opt-in system and the issues created for the providers utilizing that system. She advised most Idaho parents want to have immunization records tracked in the IRIS system. In 2008 over 85 percent of all children born in the State opted in to the IRIS system at birth, and by two years of age, virtually all children are entered in the system. She stated this legislation will make the system much more useful for parents as well as medical providers, and that the Department is committed to making sure information is readily available for parents who want to opt out of the system.

**Senator McGee** asked for an explanation of the opt-out process. **Ms. Coyle** advised that with the current opt-in system the consent is provided at the hospital, and with the opt-out system there will be information given to the parent on how to opt-out of the system.

**Senator McGee** indicated it is his understanding the process is very

similar, and a document will be handed to the parents post delivery. He asked if that was correct? **Ms. Coyle** advised that is correct.

**Chairman Lodge** noted it is hard to keep track of immunizations for multiple children in a family, and asked if she went to a doctor's office after opting in to the system would that doctor be able to determine which vaccines her children have had? **Ms. Coyle** advised that if a child opted in at birth, it would depend upon that medical provider and their utilization of the system. **Chairman Lodge** asked if one could opt in when a child is three or four years of age? **Ms. Coyle** responded, "Yes." She added that parents sometimes opt children into the registry even though they choose not to receive immunizations, simply because it is documented at that time not only for schools and day cares, but also for future medical providers. **Chairman Lodge** asked if a 20-year-old wanted to go overseas and needed a record of immunizations, would information be available on what immunizations they have had? **Ms. Coyle** advised that if that child's immunizations records were entered into the registry that information would be available 20 years from now. She stated records are not available for most children now graduating from high school and those that are older, and therefore they must go through costly testing to assure that they pass the appropriate immunables, and may have to repeat immunization series. **Chairman Lodge** asked what the cost of that testing would be? **Ms. Coyle** responded that it would depend upon what you are testing for. There is a test for every vaccine and it is her understanding that insurance does not typically cover those tests.

**TESTIMONY:**

**Erik Makrush**, representing the Idaho Freedom Foundation (IFF), stated IFF does not oppose or support any particular legislation, but simply provides information to the Legislature to make sure rights are protected. He stated IFF is not anti-vaccination. He noted that the word "voluntary" has been stricken from the language of the bill, and there is no clear statement on how a parent would opt out. IFF feels that process should be addressed in the statute to ensure rights. IFF feels the opt-in program is working well and has some concerns that this legislation could create more of a government program.

**Vice Chairman Broadsword** asked if **Mr. Makrush** is testifying in support of or opposition to the bill? **Mr. Makrush** stated IFF is not taking a position on whether to oppose or support the bill.

**Senator McGee** asked if he could point out in the piece of legislation we are debating where it says that this program is mandatory for Idaho children? **Mr. Makrush** responded it does not say "mandatory," but the word "voluntary" has been struck. **Senator McGee** asked if it is correct that IFF understands that this is still a voluntary bill? **Mr. Makrush** responded again that he just wanted to bring up the fact that the word "voluntary" has been struck from the legislation. **Senator McGee** asked if it is his belief that under the

provisions of this legislation, this program is still voluntary to Idaho's young people? **Mr. Makrush** agreed since it provides parents still have the ability to opt out.

**Senator Bock** asked if **Mr. Makrush** indicated the immunization rate in Idaho is 80 percent? **Mr. Makrush** indicated that the 85 percent he spoke of was the amount of people using the IRIS System. He added that immunization rates for Idaho children are around 57 percent. **Senator Bock** asked if the number is 57 percent, where does that 57 percent lie in relationship to other states on a comparative basis? **Mr. Makrush** advised that the State of Idaho is well below the national average of 77 percent. **Chairman Lodge** noted Idaho is 49 out of 50 states.

**Senator Hammond** asked if **Mr. Makrush** had indicated in testimony that he supports immunizations? **Mr. Makrush** responded that IFF is not opposed to immunizations. What they are saying is that parents should have the right to simply opt in to the registry rather than opting out.

**Vice Chairman Broadsword** noted that **Mr. Makrush** first said he did not have any opposition to this legislation, and then advised **Senator Hammond** that he thought it should be an opt out program, which would mean that IFF is opposed to this legislation. **Mr. Makrush** responded, "Just because the system was initially set up as an opt in." **Vice Chairman Broadsword** commented, "So you are opposed to this legislation." **Mr. Makrush** responded that IFF is opposed to the way it is written.

**MOTION:**

**Vice Chairman Broadsword** moved, seconded by **Senator Bock**, that the Committee send S 1335 to the floor with a do pass recommendation. The motion carried by **voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**RS 19714**

Relating to Emergency Medical Services System Authorities

**Chairman Lodge** announced she had just been handed RS 19714. She asked the Committee to consider sending this RS to a privileged committee for printing.

**Senator McGee** requested unanimous consent that RS 19714 be sent to the Judiciary and Rules Committee for printing.

**Senator Bock** commented that it is his understanding that if we refer this RS to Judiciary and Rules, we still have to hold a print hearing, and he would not recommend that we print it not knowing what is in it.

A discussion followed among Committee members regarding the timing and proper procedure for referring an RS to a privileged committee. The consensus of the Committee was that agreeing with a unanimous consent request to print an RS does not mean one is

in favor of and will vote for the legislation.

**ADJOURNMENT:**

With no further business to come before the Committee, **Chairman Lodge** thanked the Committee and guests, and adjourned the meeting at 4:10 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

- DATE:** February 24, 2010
- TIME:** 3:00 p.m.
- PLACE:** Room WW54
- 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.
- CONVENED:** **Chairman Lodge** called the meeting to order at 3:09 p.m., and welcomed guests.
- MINUTES:** **Senator LeFavour** moved, seconded by **Vice Chairman Broadsword**, that the Committee accept the minutes of the February 3, 2010, meeting as written. The motion carried by **voice vote**.
- Senator Bock** moved, seconded by **Vice Chairman Broadsword**, that the Committee accept the minutes of the February 4, 2010, meeting as written. The motion carried by **voice vote**.
- S 1374** Relating to Basic Daycare.
- Chairman Lodge** announced that S 1374 has been pulled from today's agenda at the request of the Department. She stated it may return at a later date.
- S 1373** Relating to Hospital Licenses and Inspections.
- Steve Millard**, President and CEO, Idaho Hospital Association (IHA) presented S 1373. He stated this legislation deals with "peer review," a very important process for quality assurance, credentialing, privileging, and professional review actions at hospitals and other health care organizations. To help the Committee understand what peer review is and how important it is to health care organizations, he requested and received permission to read Section 39-1392a, subparagraph 11 (a), (b), and (c), *Idaho Code*, setting forth the definition of "peer review."
- Senator Darrington**, stating he is interested in looking at the Session Laws related to this Act, asked in what year the Legislature

dealt with peer review. **Mr. Millard** advised that the Section of *Idaho Code* dealing with peer review was passed in 1973, amended in 1997, and subsequently amended in 2003. He stated he had the pertinent 1973 Session Laws with him and requested permission to read Section 4, page 547, titled "Immunity From Civil Liability." **Chairman Lodge** granted his request. **Mr. Millard** read the following from Section 4: "The furnishing of information or provision of opinions to any medical society or in hospital medical staff committees as herein defined or their authorized representatives or the receiving and use of such information and options shall not subject any person, hospital, sanitarium, nursing rest home or other person or agency to any liability or action for money damages or other legal or equitable relief." He stated that the individual health care entities listed in the original Act were replaced in the 1997 amendment with the term "health care organization." He advised this language, providing immunity for peer review activities, has existed since 1973.

**Senator Bock** stated the bill is confusing as we are looking at amendments to *Idaho Code*, Section 39-1392c, and do not have the previous sections for review. He asked if **Mr. Millard** could put this in context? **Mr. Millard** stated Section 39-1392 is a rather extensive section with subparagraphs (a) through (e). Subparagraph (c) deals with immunity, which is the paragraph being amended by this legislation. **Senator Bock** noted that because we are making some changes to the way the system works, in order to understand the impact of those changes, he needs to see what the whole system looks like. **Mr. Millard** reviewed contents of Section 39-1392, which covers: (a) Definitions; (b) Records, confidential and privileged; (c) Immunity from civil liability; (d) Property of health care organization; and (e) Limited exceptions to privilege and confidentiality.

**Mr. Millard** advised that the success of any peer review process depends entirely upon the participation of health care professionals and their open and candid assessments. Because health care professionals are largely volunteers in the peer review process, a lack of immunity from civil suit stifles the process and the quality of the results. He stated that despite language in the current statute providing immunity for the use of such peer review information, a recent Idaho Supreme Court decision interpreted the language to say immunity is not provided to the decision, it is only confined to the furnishing of information or the receiving of such information and use of such information. He stated that the statute does not use the word "decision," but he believes experience shows it was the intent of the Legislature to provide immunity for the action and the decision in addition to other things, and the word "use" could easily be implied to the decision or action. He advised that the purpose of this amendment is to clarify and re-express the original intent of the Legislature when the current statute was passed. He commented that the sanctity of the peer review process is crucial and must be protected.

**Mr. Millard** requested that the Committee send S 1373 to the floor with a do pass recommendation.

**Senator Bock** noted the word “actions” is used in the revised language and asked what would the range of possibilities be that would be encompassed within that word? **Mr. Millard** responded, that the action would depend on which piece of the peer review process is being considered. If you are looking at credentialing, it would be the activities to gather the information, the actions necessary to process it, and making a decision on whether or not the criteria of a particular health care organization is met by the individual. Peer review committees looking at the behavior or actions of a fellow physician would be an action. A recommendation made by a peer review committee to a higher authority to take action would be a decision. **Senator Bock** asked if a professional is undergoing a peer review, and in that review the hospital discovers treatment options in its own system that are either negligent, wrong, or unfounded, would those kind of actions be absolved from immunity? **Mr. Millard** indicated he would need to defer that question to an attorney.

**Senator Darrington** asked **Mr. Millard** if, in his view, this proposed legislation will put IHA back to where he thought they were and the way things operated before the Supreme Court decision? **Mr. Millard** responded, “Yes,” and added that is exactly what they are trying to do.

**Vice Chairman Broadsword** asked if IHA sat down with those opposed to this legislation to see if they could come up with verbiage that might be agreeable to both the IHA and the trial lawyers. **Mr. Millard** stated they had not sat down together to discuss it. He indicated he did provide the trial lawyers with a copy of the bill before it was printed, and talked to **Barbara Jorden**, who indicated they would be opposing it.

**TESTIMONY:**

**Barbara Jorden**, representing the Idaho Trial Lawyers Association (ITLA), spoke **in opposition** to S 1373. She stated ITLA is opposing this bill because they feel it is a large substantive change to this section of law. ITLA has been operating under this law for the past 35 years and have not had a disagreement about what we think the law actually states; that the immunity does exist for leaders and the collection of information during peer review for the hospitals or health care organizations. She stated that this proposed legislation would give health care organizations the ability to make decisions without recourse. She added that ITLA is not trying to get at the process of peer review, but feels that the hospitals should be responsible for the decisions they make.

**Senator Darrington** asked if at any time since 1973, to the best of **Ms. Jorden’s** knowledge, was this statute tested in the lower courts and not appealed? **Ms. Jorden** responded she did not know of any cases, but some attorneys in the audience may know the answer to

that question.

**Senator Coiner** said if we are going to look at the action and say there was a bad decision, how are you going to prove or disprove that without going back behind that decision to the peer review material that decision was based on? **Ms. Jorden** responded that ITLA would love to be able to access that information. She added that in many situations it is difficult to prove the case because that information is unavailable and probably is the reason there are few cases that go forward.

**Senator Hammond** asked how the language added in the proposed legislation at lines 18 and 19 change a physician's ability to access information over the current language? **Ms. Jorden** responded that she does not believe the proposed changes to this statute would change ITLA's ability to access the information garnered through peer review. She added that it simply immunizes the decisions that the health care organization is making based on that information.

**Senator LeFavour** noted it is her understanding that the peer review process is privileged and confidential and free from lawsuit. In addition, the furnishing of information or opinions is also shielded, but the decision rendered from that information or opinions is not currently shielded. She further observed that by adding the words "actions" and decisions," as this legislation proposes, those decisions rendered from the shielded information would also be shielded. She asked if her understanding is correct, and what range of things would be shielded from any kind of accountability? **Ms. Jorden** indicated that is her understanding also. With regard to the question on the range of things that would be shielded, she indicated that one of the hospital attorneys or plaintiff's attorneys present could better answer that question.

**TESTIMONY:**

**Ken McClure**, attorney, representing the Idaho Medical Association (IMA), spoke in support of S 1373. He stated that the peer review and credentialing process within any facility is varied by its nature and can be quite contentious. When a doctor needs oversight or disciplinary action is taken, the system demands and depends upon the free flow of information and the sanctity of the use of that information to make sure the actions taken are in the best interest of all patients, not just the interest of the doctor. He advised that the view of IMA as a whole is that the system itself depends upon the free use of this information, however, there are members of IMA who will take a different point of view because they may be on the receiving end of peer review actions.

He advised that the recent Supreme Court decision said the furnishing and provision of information and the receipt and use of the information is protected. He indicated that the use of that information is the action for which the peer review or credentialing proceeding was instituted in the first place, and the use of the information that comes through this process has to be, by its very



nature, the action which is taken based upon the information that is provided.

**Senator Bock** commented that he also is troubled by the word “use,” and perhaps the problem here is the lack of specificity in the statute in the first place. He asked if it would be better to come up with language that more explicitly defines “use” and “actions” and resolve the ambiguities both of those words create? **Mr. McClure** responded that IMA had the opportunity to look at numerous drafts, some more specific and some less specific, this seemed to be the draft that the doctors’ attorneys and hospital’s attorneys felt most comfortable with. He added he saw language that was more specific, but less good, in negotiations.

**Senator LeFavour** commented that she can understand why some level of confidentiality is desired in personnel actions, but immunity is a very different thing. She asked why immunity would be included in this legislation? **Mr. McClure** indicated he did not draft the legislation but offered an explanation of why it is important. Hospitals deal with numerous cases of this nature and need a way to deal with them that is correct, expeditious, and fair. He added it may seem like rough justice at times, but after action is taken to limit or deny credentials or to restrict someone’s practice within a facility, litigation will follow. He added that in addition to adding to the cost of health care, the process will be slowed and ultimately the quality assurance role that this statute was trying to address is not well served. **Senator LeFavour** asked about an incident where the review board may say, everything is fine, clear the individual being reviewed, and then something awful happens? **Mr. McClure** advised that his understanding of this bill is that it does nothing to immunize the physician who was guilty of malpractice; that goes on in and of itself. This deals with whether the physician who was practicing can bring suit with respect to the decision restricting privileges. **Senator LeFavour** asked what if the hospital knew there was a problem with the physician, and allowed him to practice? **Mr. McClure** indicated that if there is substandard care provided, that substandard care may be the basis for a malpractice action against the person or entity that provided the substandard care. Nothing in this legislation does anything to prevent that.

**Senator Coiner** asked if a physician, by choosing to apply to practice in a given hospital, stipulates to their oversight and this peer review section? **Mr. McClure** advised that the relationship between the hospital and the physician is governed by the hospital’s medical staff bylaws. Those bylaws establish the rights and obligations of the parties. In some sense there is a contract between the physician and the hospital that says if there are disputes, this is how they will be resolved. The physician’s rights are protected by or limited in those bylaws. **Senator Coiner** commented that a physician should understand going into his contract with a particular hospital that he has chosen to work under that set of bylaws. **Mr. McClure** responded that is correct.

**Senator Darrington** asked **Mr. McClure** if he agreed that to the best of his knowledge this was not tested in the 35-year period since 1973? **Mr. McClure** responded he is unaware of any cases. **Senator Darrington** asked if the Supreme Court affirmed or overturned? **Mr. McClure** advised although he has read the decision he is uncertain, but believes the Court reversed a decision granting summary judgment. **Senator Darrington** commented that we have a lot of good practitioners who deal with medical malpractice, and asked if perhaps the reason this was not significantly tested until recently was that those practitioners agreed with the testimony of **Mr. Millard** that our law really was as this proposed legislation makes it. **Mr. McClure** stated he was not here in 1973, but was involved when amendments were made. During that time it was his belief, and the collective belief of those he worked with on amendments to this statute, that this was the law. He stated it is his personal belief now that this does not change the law; it merely restates what he thought the law to be.

**TESTIMONY:**

**Eric Rossman**, attorney, Rossman Law Group PLLC, who represents physicians, and represented the Harrisons before the Idaho Supreme Court in the case of Harrison v. St. Alphonsus, spoke **in opposition** to S 1373. He stated the legislation is ill advised and pointed out the potential ramifications and impact this legislation would have. He stated the only thing this amendment does is give the hospital absolute immunity for any conduct in making credentialing and privileging decisions. Even if a hospital makes that decision in a reckless or intentional manner to injure a physician or a patient, it would have absolute immunity pursuant to this amendment. He stated that the purpose of peer review protection immunity is to protect the exchange and use of information. That was provided prior to Harrison, and that is provided today. Physicians have exactly the same immunity and are not discouraged in any way from participating in the process and all of the records and information that is exchanged as part of the process is still protected from disclosure. He advised that the Idaho Supreme Court, in a four to one decision, analyzed the legislative intent and said it protects the process – the exchange and use of information – not the ultimate decision by the board of directors of the hospital to credential or privilege a physician.

**Mr. Rossman** stated that with this amendment Idaho will become the only state in the Union to provide absolute immunity to a hospital and its board of directors in its decision to grant or deny privileges or revoke privileges of a physician. Physicians could be recklessly or even intentionally denied privileges by a hospital with no recourse or remedy; their livelihood could be at stake. He indicated the reason there are very few cases asserting negligent credentialing against a hospital in the past is because the statute protects the documents and information. A patient who may have been hurt by a problem physician has no access to the documentation and information considered in granting that physician privileges. It is only the extraordinary egregious case, like Harrison that can be proven in

order to establish negligent credentialing.

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** noted he is intrigued by the fact that **Mr. Rossman** indicated there have been 30 decisions in various courts of a similar result, but what he did not report to us is what the differing statutes in the various states may say. Some may include provisions such as the amendatory language here, some may lack it, other words may be different. Even though states regularly write statutes in areas like this according to what they find in other states, they generally tailor it to their own state. He asked **Mr. Rossman** to comment on that. **Mr. Rossman** stated he does not in any way advocate to this Committee that every state's statutes are identical. They are differently worded. Some are worded more openly and some are worded more restrictively. The State of Ohio's legislation specifically references decisions, yet it does not provide absolute immunity to a hospital. He added that the underlying purpose for the legislation is the exact same as we have in Idaho; that is to protect the exchange and use of information, not to provide the hospital absolute immunity.

**TESTIMONY:**

**Julie Harrison** stated her testimony would repeat that of **Mr. Rossman**.

**TESTIMONY:**

**Mike Hajjar, M.D.**, a neurosurgeon practicing in Boise, past chair of the Department of Neurosurgery at St. Alphonsus Hospital, and manager of the call and trauma system for neurosurgeons throughout the city and this part of the State spoke **in opposition** to H 1373. He stated that peer review procedures need to protect the ability of the hospital to fairly and honestly review actions and physician behavior. He outlined the hospital management framework and identified the differences between the administration and governance sides of the organization. He commented that we need to maintain the confidentiality of the peer review process, but the process itself needs to be transparent so that the organization adheres to the principles it has set forth. He gave some examples of how the process could be abused and how decisions could be made that may not be in the best interest of patients, but may favor physician groups. He stated his biggest concern with this legislation is that we are setting up situations that create immunity for people who could make decisions in bad faith, and that could be truly dangerous to physicians as well as patients.

**Senator Bock** asked what kind of actions could be encompassed within the amending language of this statute. **Dr. Hajjar** indicated the main actions have to do with physician privilege and credentialing – their ability to practice at a specific hospital. The main action a hospital has at its disposal is to revoke privilege. If that is done in genuine respect to regard for patient safety that is

okay, but if it is done for any competitive reason, where people are using the process for secondary gain, that cannot be tolerated.

**Vice Chairman Broadsword** asked **Dr. Hajjar** if he is a member of the IMA? **Dr. Hajjar** indicated that he is.

**Senator Darrington** asked if **Dr. Hajjar** felt, as a practitioner, that he had more immunity before the Supreme Court decision than he does today? **Dr. Hajjar** indicated he does not think his immunity has changed, but the issue is are we going to give bad behavior a shield.

**TESTIMONY:**

**Jeremy Pisca**, attorney, representing St. Alphonsus Hospital, spoke in support of S 1373. He stated the Committee is being asked whether or not it believes the word “use” includes the decision based upon such use. He reviewed the issues of the Harrison case, and advised that in a split decision the Court said there is a difference between the use of information and the decision that was based upon the use of such information. He stated in his opinion the only thing you can do with information is make a decision based upon it. So, what we are doing here is clarifying what the medical and hospital community thought this statute meant – if you utilize the peer review process you are immune from civil liability. He added we are not talking about absolute immunity. If a hospital acts negligently, that hospital is going to be sued for negligence, and if a doctor acts negligently, that doctor is going to be sued for medical malpractice.

**Vice Chairman Broadsword** asked if he said in this change to the law would not give absolute immunity to a hospital? **Mr. Pisca** responded that is absolutely his opinion.

**Senator Bock** noted that it seems to him that **Mr. Pisca** used the word “actions” in the sense of a lawsuit, and by doing that he thinks it aptly demonstrated why this language is so problematic. He added his interpretation of actions in this instance is from the verb to act, to do something. He asked it that was **Mr. Pisca’s** intent when he made reference to actions, and whether he sees some of the same ambiguity in this language? **Mr. Pisca** indicated he does not see those ambiguities, because if you look at the chapter as a whole you are talking about hospital licenses and inspections. If you take a look at the definitions you can see that we are talking about peer review, which is clearly defined. **Senator Bock** noted one action could be credentialing a physician who should not be credentialed, and even if it is not in bad faith, it could be a more egregious form of behavior than negligence. He indicated it seems that a negligent credentialing is shielded by this amendment because the negligent or willful credentialing is an action taken by the board as part of the peer review process, and asked how **Mr. Pisca** can say then that this behavior is not shielded by this language? **Mr. Pisca** responded that there is a difference between a civil action which you would file in a civil court, and what he is talking about which is actions or

decisions based upon peer review information. He advised it is his further understanding that since the Harrison decision, this statute is now just fair game. Doctors are actually filing lawsuits because their credentials were removed. **Senator Bock** indicated that looking at this amendment, it is very clear it would forbid a lawsuit based upon the negligence you are talking about. **Mr. Pisca** disagreed, stating that if a hospital credentials a doctor who shows up to work every day drunk, and it can be proved that the hospital knew the doctor showed up to work every day drunk, that is negligence, and an action can be filed. The only thing this section does is say you cannot go back through the peer review process and dismantle it and depose every single doctor. He stated it is the sole intent of this section to protect the sanctity of the peer review process so, as the Supreme Court said, they can engage in the free exchange of information and opinions regarding peer review activities which obviously includes credentialing.

**TESTIMONY:**

**Christine Newhoff**, General Counsel, St. Luke's Health System, spoke **in support** of S1373, stating that she agrees with previous testimony in support of the legislation but would like to respond to a question by **Senator LeFavour** regarding a situation where a hospital credentials a physician knowing the physician has problems and then there is an adverse event. **Mr. McClure** responded that he could not envision a situation where a hospital would not take action in such a situation. She would like to clarify that the hospital only knows of these problems if they are brought to the attention of the board of directors. The mechanism for that is through the medical staff credentialing and peer review process. If physicians feel like they have less protection than they thought they had previously, they will be reluctant to participate in that process, and that may result in fewer situations like that coming to light.

**Senator LeFavour** asked if a physician was credentialed in a peer review process and there was no external evidence, would there not be immunity under this particular section? **Ms. Newhoff** stated it is not hospital staff who end up making the decision of whether to credential a physician, the credentialing process occurs through the medical staff and a credentialing committee that reviews the file and investigates. That committee makes a recommendation to the medical executive committee, also comprised of physicians, and at St. Luke's comprised of the chairs of all the departments, and that body then makes a recommendation to the Board of Directors who makes the decision. The decision is based on the information that comes through this process, so to that degree, yes it would provide immunity, but it is not a decision by hospital staff.

**Vice Chairman Broadsword** noted that testimony gave an example of a doctor sitting on the credentialing committee who did not want competition, and gave a bad review to someone who was being credentialed. She asked **Ms. Newhoff** to address whether that happens in rural hospitals, or is this a decision not by one person but by a board. **Ms. Newhoff** stated that decision is not made by

one person, it is made by a committee. If you decline credentials to a physician, and it is based upon something other than they don't meet the basic criteria, that physician has a right to a fair hearing. If it is denied after going through that process, and it is based on something other than failing to meet the administrative criteria, it is reportable to the national practitioner guide banks.

**Senator Coiner** asked if the peer review groups are solely doctors, or if **Ms. Newhoff** has the opportunity to sit through proceedings as the attorney for the hospital? **Ms. Newhoff** indicated she has attended medical executive committee meetings, but does not vote. **Senator Coiner** asked if in observing those proceedings she has experienced situations where panel members personalities are not well suited for that job, and if so, are those members gradually replaced by others who function in that capacity at a higher level? **Ms. Newhoff** indicated she had not experienced that situation. She added that medical executive committees are of significant size, and occasionally there is lively debate, but she has not seen someone removed. **Senator Coiner** indicated testimony was given that a committee member could influence a decision for competitive reasons. He asked if **Ms. Newhoff** had experienced that situation? **Ms. Newhoff** indicated she had not seen that with a larger committee, but has seen that with a smaller committee. She advised that generally the medical staff bylaws contains provisions regarding who can be on a hearing and investigative panel, and those are fairly descriptive to avoid discrimination. You try to make sure those bodies are quite objective.

**MOTION:** **Senator Bock** moved, seconded by **Senator LeFavour**, that the Committee hold S1373 in Committee.

**SUBSTITUTE MOTION:** **Senator Coiner** moved, seconded by **Senator Smyser**, that the Committee send S 1373 to the floor with a do pass recommendation.

**Senator LeFavour** requested a roll call vote.

**Senator McGee** declared he has a possible conflict in accordance with Senate Rule 39(H), but will vote on the motion.

**VOTE:** **Chairman Lodge** requested the Secretary call the roll on the substitute motion to send S 1373 to the floor with a do pass recommendation. The results of the vote were: **Senator Bock**, nay; **Senator LeFavour**, nay; **Senator Smyser**, aye; **Senator Hammond**, aye; **Senator Coiner**, aye; **Senator McGee**, aye; **Vice Chairman Broadsword**, aye; **Chairman Lodge**, aye. The substitute motion passed with 6 "ayes," 2 "nays," and one member absent. **Senator Darrington** will sponsor the bill on the floor.

**ADJOURNMENT:** **Chairman Lodge** thanked the Committee and those who provided testimony. She announced there would be no meeting on Thursday, February 25, 2010, and adjourned the meeting at 4:35 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 1, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:07 p.m., and welcomed guests.

**GUBERNATORIAL  
APPOINTMENT  
HEARING:** **Kent Ireton** of Twin Falls, Idaho, was appointed to the Commission for the Blind & Visually Impaired to serve a term commencing July 1, 2009, and expiring July 2, 2012. **Mr. Ireton's** political affiliation is Independent.

**Chairman Lodge** noted **Mr. Ireton** has served a partial term on this Commission and this is a reappointment. She advised that the hearing would be conducted via telephone to accommodate **Mr. Ireton**, and asked the Secretary to initiate the phone call.

**Mr. Ireton** thanked the Committee for the opportunity to appear before it in relation to this appointment. He provided the Committee with a short biography of his professional and personal life, and stated that he looked forward to continuing to serve the Commission, the Governor, and the Legislature.

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

**Chairman Lodge** invited Committee members to ask a question of **Mr. Ireton**. In response to those questions, **Mr. Ireton** advised that he is very familiar with the agency issues, and understands the issues of blindness and visual impairment. He stated he brings a strong vocational emphasis to the Commission, as his profession involves assisting people with visual impairment find and keep employment. He believes that is also an integral role of the Commission. He indicated he has a lot of respect for the National Federation of the Blind (NFB), and any other consumer



organization. He noted there have been struggles over the years in designing who runs the show but feels that situation has improved under Administrator, Angela Jones, and the relationship she has established with NFB. He feels that relationship is a healthy one at this time.

**Chairman Lodge** thanked **Mr. Ireton** for appearing before the Committee via telephone and advised him that a vote on his appointment would be taken at the next meeting.

#### **H 484**

Relating to Nurses.

**Sandra Evans, RN, MAEd**, Executive Director, Idaho Board of Nursing, presented H 484. She stated that this legislation seeks to eliminate outdated and unnecessary verbiage. It further provides that Board members whose terms have expired will continue to serve until they are either reappointed to another term or until they have been replaced.

**Ms. Evans** requested that the Committee send H 484 to the floor with a do pass recommendation.

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

**Senator Darrington** noted he is sympathetic to this cause, but has a concern the office of Governor has a huge number of appointments to make. Some governors are more prompt in making those appointments than others, but almost all governors are usually behind the eight ball in trying to be current on appointments. His concern is that this legislation will do nothing to push them to get those appointments made. He asked if the Board of Nursing has considered that? **Ms. Evans** advised that the Board of Nursing is very fortunate in that most of the Governors have been very prompt with appointments. A delayed appointment tends to occur when there is not a qualified applicant willing to step in for the nomination. A major concern has been when more than one appointment is open and a Board member is out for an extended period of time, and the Board does not have a quorum for conducting business.

**Senator Bock** noted the amending language is typical of board of directors language, in that there is not a real expiration of a term until someone replaces that person. He asked if the intent is to provide continuity? **Ms. Evans** responded that is correct. She added the board had this identical language in statute until a major revision of the statute in the 1980s, when it was inadvertently deleted in a rewrite of the statute at that time.

#### **MOTION:**

**Senator Hammond** noted he appreciates concerns, but has seen boards that are unable to operate when appointments are delayed. He moved, seconded by **Senator Darrington**, that the Committee

send H 484 to the floor with a do pass recommendation. **Senator Smyser** will sponsor the bill on the floor.

**Senator Bock** indicated he would support the motion because he thinks this change actually makes the situation better with governor appointments rather than worse.

The motion **carried by voice vote**.

**H 494**

Relating to Health Care Planning.

**Representative John Rusche**, District 7, presented H 494. He stated this legislation removes the sunset date for the Health Quality Planning Commission (HQPC). It also restates the duties of that Commission, removing outdated language relating to the creation of a health data exchange, and adds monitoring the effectiveness of the Idaho Health Data Exchange. It further restates the role of the Commission with respect to monitoring and reporting of healthcare quality and patient safety. He advised that HQPC includes physicians, hospital executives, health plan executives, business representatives, lay citizens and the Director of Health and Welfare, and is the only place where the major players in the healthcare system meet to discuss issues of quality and safety affecting Idaho citizens. He stated that HQPC worked diligently in developing a plan for the Health Data Exchange, and facilitated the development of the not-for-profit corporation that is now running that exchange. It has now started to identify significant health issues including immunization and childhood obesity, and is addressing other critical activities such as improved efficiency, improved quality, and lowering the cost of Idaho's health care.

**Representative Rusche** requested that the Committee send H 494 to the floor with a do pass recommendation.

**Senator Darrington** noted in the stricken language, part of the functions are assumed by the Department of Purchasing and part by the Department of Health and Welfare, and asked if that is correct?

**Representative Rusche** advised that the Health Data Exchange has been developed and is owned by a not-for-profit corporation outside of the State of Idaho. Health and Welfare sits on the Board of that corporation, and we appropriated money to develop the Health Data Exchange, however the operations are run by the not-for-profit corporation and not through the Department of Purchasing.

**Vice Chairman Broadsword** asked if the budget for this Commission is included in the Health and Welfare budget, and whether there was any private funding included? **Representative Rusche** advised that the Health Data Exchange includes significant private money donated by communities and is funded by grants including health information technology grants. The Commission members are volunteers, with the exception of the Health and Welfare employee, and the cost is included within the Health and

Welfare budget. Director Armstrong testified that he puts \$30,000 in the budget for this cost, but the costs have not been that much. **Vice Chairman Broadsword** asked if that is in the base budget, and can they survive with less? **Representative Rusche** responded that he believes it is in their base budget. **Vice Chairman Broadsword** asked if this has been brought before the Health Care Task Force where it was passed unanimously? **Representative Rusche** responded, "Yes."

**Senator McGee** asked if this piece of legislation has a sunset? **Representative Rusche** advised it did not, this legislation is taking a sunset off.

**TESTIMONY:**

**Mckinsey Miller**, of Gallatin Public Affairs, representing Regence Blue Shield of Idaho, spoke **in support** of H 494. She stated that Regence has participated on the Commission since its inception in 2006. She stated that further recommendations coming from the Commission will be key as the market moves to a system where quality outcomes play a greater role in forming our healthcare decisions.

**MOTION:**

**Senator Bock** moved, seconded by **Vice Chairman Broadsword**, that the Committee send H494 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator Bock** will sponsor the bill on the floor.

**HCR 39**

Stating Findings of the Legislature and Encouraging the Health Quality Planning Commission Within the Department of Health and Welfare to Study Stroke Systems of Care in Idaho and Develop a Plan to Address Stroke Identification and Management.

**Representative Rusche** presented HCR 39. He stated that stroke is a significant cause of death and disability for Idahoans, and an expensive health care issue, with the Idaho Medicaid program paying a significant part of those costs. Recent improvements in stroke identification and care have provided an opportunity to lessen the brain injury from stroke, but to be successful these interventions need to be used in a timely manner. Areas that have organized systems of care extending from community awareness of stroke symptoms, to EMS training, ER treatment, and integrated hospital and rehabilitation care have better outcomes clinically, and lower the need for ongoing supportive care which is a great advantage to our families. This resolution encourages the Health Quality Planning Commission to study care for stroke identification and management, and to make recommendations for improvement.

**Vice Chairman Broadsword** commended **Representative Rusche** for developing this idea and seeing it to fruition.

**MOTION:**

**Senator Coiner** moved, seconded by **Vice Chairman Broadsword**, that the Committee send HCR 39 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator LeFavour** will sponsor the resolution on the floor.

**H 468**

Relating to the State Board of Optometry.

**Tana Cory**, Chief, Bureau of Occupational Licenses, presented H 468. She stated this bill will remove members of the State Board of Optometry from the Public Employee Retirement System of Idaho (PERSI) by changing the payment they receive from compensation to an honorarium under *Idaho Code* 59-509. She advised the Board would like to make this change in order to avoid any possible tax implications since membership in a qualified plan, such as PERSI, limits participation in a personal IRA.

**Ms. Cory** requested that the Committee send H 468 to the floor with a do pass recommendation.

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

**Vice Chairman Broadsword** asked if the Board of Optometry is in good shape financially? **Ms. Cory** advised that to the best of her recollection they are in good shape with the requested year to year and one-half funding available.

**MOTION:**

**Senator Coiner** moved, seconded by **Vice Chairman Broadsword**, that the Committee send H 468 to the Consent Calendar. The motion **carried by voice vote**. **Senator Coiner** will sponsor the bill on the floor.

**H 469**

Relating to the Occupational Therapy Practice Act.

**Ms. Cory** presented H 469. She stated that this bill will remove members of the Occupational Therapy Licensure Board from the Public Employee Retirement System of Idaho (PERSI) by changing the payment they receive from compensation to an honorarium under *Idaho Code* 59-509. It also clarifies that all fees shall be paid to the Bureau of Occupational Licenses and deposited in the occupational licenses account, and all costs and expenses shall be paid from this account.

**Ms. Cory** requested that the Committee send H 469 to the floor with a do pass recommendation.

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 Smyser** moved, seconded by **Senator Hammond**, that the Committee send H 469 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator Coiner** will sponsor the bill on the floor.

**MINUTES:**

**Senator Bock** moved, seconded by **Senator Smyser**, that the Committee accept the minutes of the February 9, 2010, meeting as

written. The motion **carried by voice vote**.

**Senator Smyser** moved, seconded by **Senator Hammond**, that the Committee accept the minutes of the February 8, 2010, meeting as written. The motion **carried by voice vote**.

**ADJOURNMENT:**

**Chairman Lodge** reviewed the agenda for Tuesday, March 2, 2010.

**Senator Coiner** asked if there is a time frame for hearing the EMS bill. **Chairman Lodge** advised that the bill was printed today, and if there is a hearing, it will be a hearing only on March 10, giving the parties involved an opportunity to come to consensus.

With no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 3:45 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 2, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:02 p.m., and welcomed guests.

**MINUTES:** **Senator Bock** moved, seconded by **Senator Coiner**, that the Committee accept the minutes of the February 10, 2010, meeting as written. The motion **carried by voice vote**.

**GUBERNATORIAL  
APPOINTMENT  
VOTE:** **Kent Ireton**, of Twin Falls, was appointed to the Commission for the Blind & Visually Impaired to serve a term commencing July 1, 2009 and expiring July 1, 2012.

**Senator Smyser** moved to send the gubernatorial appointment of **Kent Ireton** to the Commission for the Blind & Visually Impaired to the floor with the recommendation that it be confirmed by the Senate. **Senator Coiner** seconded the motion. The motion **passed by voice vote**. **Senator Coiner** will sponsor **Mr. Ireton's** appointment on the floor.

**H 481** Relating to Pharmacists.

**Mark Johnston**, Executive Director, Idaho Board of Pharmacy, presented H 481. He stated that the proposed legislation will require that oral prescription orders be confirmed by a veterinarian in writing within seven days after the veterinary drug outlet receives the order, which is an increase from the existing seventy-two hours provided in statute.

**Mr. Johnston** requested that the Committee send this bill to the floor with a do pass recommendation.

**Chairman Lodge** asked if this bill would govern a large veterinary outlet selling throughout the United States, and asked that **Mr.**

**Johnston** explain the process? **Mr. Johnston** stated that veterinary drug outlets are pharmacies for veterinary prescription items only, and the prescriptions do not have to be stamped by a pharmacist, but only by a veterinary drug technician. They are limited pharmacies and cannot dispense controlled substances. He advised that a veterinary drug technician can receive an oral prescription from a veterinarian, but the veterinarian must follow that up with a hard copy prescription. He advised that many of the veterinary drug outlets that were once independently owned are now being bought up by bigger national organizations, such as Farm City, in Caldwell.

**MOTION:**

**Senator Coiner** moved, seconded by **Senator Bock**, that the Committee send H481 to the floor with a do pass recommendation, and with the recommendation that it be placed on the consent calendar. The motion **carried by voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**H 482**

**Mr. Johnston** presented H 482. He stated that pharmaceutical waste is a growing concern with prescription medications being found in our rivers, lakes and drinking water. He advised it is illegal for a patient to give their prescription medication to anyone, including to a company who will properly dispose of a medication through incineration. Thus, patients are left to dispose of medications by themselves by flushing into sewer systems or leach fields or disposing into landfills. He stated most citizens realize these options are poor for our environment, so they continue to house unwanted medications which could end up in the hands of an abuser. In response, some local police forces have utilized a Drug Enforcement Agency (DEA) exception to the delivery of drugs, and have created local drug take-back programs, but those programs are not prevalent enough. This legislation will allow prescription drug users who have lawfully obtained prescription drugs to deliver those drugs to an individual who is authorized by state or federal law or regulation to dispose of such drugs. The DEA does not allow this delivery for controlled substances, except to law enforcement, however, this bill is modeled after HR1359 which addresses controlled substance disposal on a federal level. He advised this bill will allow proper disposal of non controlled drugs upon its enactment, and controlled substances if Congress passes HR1359.

**Mr. Johnston** requested that the Committee send this bill to the floor with a do pass recommendation.

**Vice Chairman Broadword** asked who is an authorized state or federal entity to receive prescription drugs, who authorizes them, and how do they become an authorized disposal place? **Mr. Johnston** advised that law enforcement is the only current authorized receiver, but he anticipates reverse distributors, who are registered with the Board of Pharmacy, and other entities will be able to accept product back from ultimate users. He advised that now reverse distributors can only accept product back from practitioners, and they make their money off of the manufacturer's return policies. **Vice Chairman Broadword** asked if there has

been any discussion with the Board of Veterinary Medicine, since many veterinarians own incinerators and may be willing to dispose of drugs in that manner? **Mr. Johnston** indicated those discussions had not been held, and advised that in the last couple of years the EPA and DEQ have shut down almost all of those incinerators.

**Senator Bock** asked if the gasses emitted are the reason the incinerators were shut down? **Mr. Johnston** responded, "Yes." He added that DEQ and EPA feel air pollution is just as bad as water and ground pollution.

**Senator Smyser** asked how soon this legislation might come to fruition? **Mr. Johnston** responded that if this bill passes, we will be able to allow the delivery. It does not solve the problem; it just gets out of the way of people who might solve the problem, namely for profit entities that would be able to incinerate waste. With regard to federal law allowing disposal of controlled substances, he advised that Congress has five bills in front of it. The one that seems to have the most support is HR1359, which is substantially similar to this bill. There are four other bills, a grant bill that provides money to study the issue, one that would require the DEA to come up with six alternatives for congress to pick from, and another is similar to HR1359. He stated he is not certain how soon this issue might be acted upon.

**Senator Coiner** commented he feels the responsibility of getting unused drugs back into a safe environment lies with the drug companies, and it is despicable that they have not stepped forward to deal with this in a more active manner. He stated this is a pathetically weak start, but it is a start, and maybe as we evolve they will see the error of their ways and step up and be more responsible. **Mr. Johnston** advised that British Columbia has a system that holds drug companies responsible. They track the amount of drugs sent into their provinces by each manufacturer, and to pay for the pharmaceutical waste disposal program, they charge the cost of it back to manufacturer based on the percentage of drugs that came in through the manufacturer. He stated that when he spoke to manufacturers about that program, they say they increase prices accordingly, and the user ends up paying for it.

#### **MOTION**

**Senator Bock** moved, seconded by **Vice Chairman Broadsword**, that the Committee send H 482 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator Bock** will sponsor the bill on the floor.

#### **H 483**

**Mr. Johnston** presented H 483. He advised this proposed legislation is necessary to provide the Board of Pharmacy with valuable information to review as a part of the licensure process. It will require fingerprint-based criminal background checks for all applicants for licensure and registration and reinstatement of licenses and registrations, but not for renewal of existing licenses.

**Mr. Johnston** requested that the Committee send this bill to the



floor with a do pass recommendation.

**Vice Chairman Broadsword** stated she assumes an applicant would have had a background check before going through school, and asked why this additional check would be necessary? **Mr. Johnston** stated that not all colleges require fingerprint background checks. If a school does require one and finds something wrong, that information is privacy protected. He also indicted pharmacy school is four years and a lot can happen between the initial background check and graduation. The Board feels this is necessary because so much time is being spent on the back end tracking down and prosecuting people that lied on their application. He stated the Board deems it less expensive and less burdensome to find out issues up front as opposed to dealing with a contested case hearing later. **Vice Chairman Broadsword** commented that she remembered spending authority for this in the Board's appropriation bill and asked if she was correct? **Mr. Johnston** indicated she was correct. He added it would be handled as a pass through, but the appropriation is necessary because the Board collects the \$30 fee from the applicant, and they compensate the Idaho State Police for the fingerprint background check.

**Chairman Lodge** stated she thought the fee for a fingerprint background check is more than \$30, and asked if that figure is correct? **Mr. Johnston** advised that the cost is \$29.95 for this check. He added that if you don't have the luxury of being a government agency going through the Idaho State Police for this service, the cost is substantially more with the FBI.

**MOTION:**

**Vice Chairman Broadsword** moved, seconded by **Senator Bock**, that the Committee send H 483 to the floor with a do pass recommendation, and with the recommendation that it be placed on the consent calendar. **Vice Chairman Broadsword** will sponsor the bill on the floor.

**ADJOURNMENT:**

**Chairman Lodge** announced there would be no meeting on March 3 and 4, 2010. She thanked the Committee for their hard work, and adjourned the meeting at 3:22 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 8, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:07 p.m., and welcomed guests.

**MINUTES:** **Senator Bock** moved, seconded by **Senator Smyser**, that the Committee accept the minutes of the February 15, 2010, meeting as written. The motion **carried by voice vote**.

**Senator LeFavour** moved, seconded by **Senator Hammond**, that the Committee accept the minutes of the February 16, 2010, meeting as written. The motion **carried by voice vote**.

**H 470** Relating to the Practice of Physical Therapy.

**Roger Hales**, attorney, representing the State Board of Physical Therapy, presented H 470. He stated that this legislation adds a qualification for foreign-educated physical therapists. These applicants would now be required to pass a standardized English proficiency examination if English is not the applicant's native language. The bill also clarifies that the Board may require more than one competency exam for licensure. He stated that because Idaho is one of eight states that does not currently require an English proficiency exam before licensing a foreign educated physical therapist, the Board receives applications from foreign trained individuals, and once they pass the exam, they go directly to another state. **Mr. Hales** introduced **Brian White**, Chairman of the State Board of Physical Therapy, who is available to answer any technical questions the Committee may have.

**Mr. Hales** requested that the Committee send this bill to the floor with a do pass recommendation.

Supporting documents related to this testimony have been archived

and can be accessed in the office of the Committee Secretary (see Attachment 1).

**Senator LeFavour** asked how this would affect an individual who is planning to practice in a community that is pretty much exclusively speaking the language that they speak. **Mr. Hales** advised that they must first pass the national exam which is only given in English. He added that the Board feels it is a safety issue to ensure a licensee can communicate with a patient. **Senator LeFavour** asked why the Board wants to retain the option to require separate proficiency exams? **Mr. Hales** indicated every applicant must take the national exam, which is a proficiency, competency based exam. Conceivably, requiring that they take this English based exam could also be a competency based exam. The Board is just trying to eliminate any potential conflicts. He added that there is the possibility the Board could, in the future, require an open book state law and rule examination, which is pretty common in other professions, and this legislation would allow the Board that flexibility. **Senator LeFavour** indicated she is troubled by the pairing of these two requirements, as it appears obstacles are being thrown in front of individuals whose first language is not English, or who are not born in the United States. **Mr. Hales** responded that it is common for the Board to pursue legislation in one bill for efficiency purposes.

**Senator Darrington** asked where these applicants are coming from? **Mr. Hales** advised mostly from India and the Phillipines. **Mr. Darrington** asked if Canadian is a foreign language and how this would affect Canadians? **Mr. Hales** advised he is not sure how many come from Canada, and those English speaking applicants from Canada would probably not be obligated to take the English proficiency exam.

**Senator Bock** noted that Section 54-2212, *Idaho Code*, sets forth the qualification for licensure of foreign-educated physical therapists, and he suggested that an applicant from Canada would be required to take an English proficiency exam. **Mr. Hales** advised that if they are educated in a foreign country, they would be obligated to take the English proficiency exam if English is not the applicant's native language.

**Senator Darrington** noted that instances referred to by **Senator Bock** would likely be covered by rule. **Mr. Hales** advised it very well could be.

**MOTION:**

**Senator Hammond** moved, seconded by **Senator McGee**, that the Committee send H 470 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator Hammond** will sponsor the bill on the floor.

**H 538**

Relating to the Freedom of Choice of Dentures Act.

**Mr. Hales**, representing the Board of Dentistry, presented H 538. He stated this bill will remove lay members of the State Board of

Denturity from the Public Employee Retirement System of Idaho (PERSI) by changing the payment they receive from compensation to an honorarium under *Idaho Code*, Section 59-509. It also raises the renewal fee cap from \$600 to \$1,000. He stated this is not a fee increase, but simply raises the cap for possible future needs. He advised that last year's fee increase allowed \$1,500 of the Board's debt to be retired within six months.

**Mr. Hales** requested that the Committee send this bill to the floor with a do pass recommendation.

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 Smyser** moved, seconded by **Senator Hammond**, that the Committee send H 538 to the floor with a do pass recommendation.

**Senator Hammond** questioned whether this bill, with the change in the fee cap, could be sent to the consent calendar? **Chairman Lodge** advised the Committee could do that.

**WITHDRAWN MOTION:** **Senator Smyser** withdrew her motion, and **Senator Hammond** withdrew his second.

**MOTION:** **Senator Hammond** moved, seconded by **Senator Smyser**, that the Committee send H 538 to the floor with a do pass recommendation, and with the recommendation that it be placed on the consent calendar. The motion **carried by voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**H 480** Relating to Pharmacists.

**Mark Johnston**, Executive Director, Idaho Bureau of Pharmacy, presented H 480. He advised that this proposed legislation will allow for practitioner's agents to sign and return faxed prescription refill requests, which meet new minimum standards.

**Mr. Johnston** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**MOTION:** **Senator McGee** moved, seconded by **Senator Hammond**, that the Committee send H 480 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator McGee** will sponsor the bill on the floor.

**H 517** Relating to Pharmacists.

**Mr. Johnston** presented H 517. He advised that this legislation

provides that each licensed or registered pharmacist shall apply for renewal not later than June 30, a change from the current statutory deadline of June 1. In addition, new online renewal eliminates the month-long processing time for renewals, thus the change will afford applicants a more lenient process, as licenses expire on July 1.

**Mr. Johnston** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**MOTION:**

**Senator McGee** moved, seconded by **Senator Darrington**, that the Committee send H 517 to the floor with a do pass recommendation, and with the recommendation that it be placed on the consent calendar. The motion **carried by voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**H 518**

Relating to Uniform Controlled Substances.

**Mr. Johnston** presented H 518. He read Section 37-2702(d), *Idaho Code*, relating to scheduling of controlled substances, and Section 37-2714, *Idaho Code*, relating to republishing of schedules. He advised this proposed legislation will update Idaho's controlled substance schedules, as required by Sections 37-2702(d) and 37-2714, *Idaho Code*.

**Mr. Johnston** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**Senator Darrington** commented that in the past, this schedule was updated every year, and the reason there are so many additions is that **Mr. Johnston's** predecessor did not update regularly, so with this amendment **Mr. Johnston** has things back on track. **Mr. Johnston** responded, "Yes."

**MOTION:**

**Senator LeFavour** moved, seconded by **Senator McGee**, that the Committee send H 518 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator LeFavour** will sponsor the bill on the floor.

**H 519**

Relating to Uniform Controlled Substances.

**Mr. Johnston** presented H 519. He stated that by not defining what type of isomer is meant, the current code technically includes many substances that are not considered controlled substances. He advised this proposed legislation will define the term "isomer" in the Uniform Controlled Substances Act as an optical isomer.

**Mr. Johnston** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**MOTION:**

**Senator LeFavour** moved that the Committee send H 519 to the floor with a do pass recommendation. She then rescinded her motion, and moved that the Committee send H 519 to the floor with a do pass recommendation, and with the recommendation that it be placed on the consent calendar. **Senator Hammond** seconded the motion. The motion **carried by voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**ADJOURNMENT:**

**Chairman Lodge** announced that the agenda for March 9, 2010, will be short as the Senate is scheduled to be on the floor at 4:00 p.m. She advised that the meeting on Wednesday, March 10, 2010, will be held in Room WW02 to accommodate anticipated guests for a hearing only on S 1391, relating to Emergency Medical Services System Authorities.

There being no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 3:35 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

- DATE:** March 9, 2010
- TIME:** 3:00 p.m.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Lodge, Senators Darrington, McGee, Coiner, Hammond, Smyser, and LeFavour
- MEMBERS ABSENT/  
EXCUSED:** Vice Chairman Broadsword, and 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.
- CONVENED:** **Chairman Lodge** called the meeting to order at 3:04 p.m., and welcomed guests.
- HCR 57** Stating Legislative Findings and Commending and Congratulating Idaho State University for its Outstanding Programs in the Health Professions.
- Representative Pete Nielsen**, District 22, presented HCR 57. He stated the purpose of this resolution is to congratulate and commend Idaho State University for its outstanding programs in the Health Professions, and for its contribution to the enhancement and quality of life for Idaho citizens.
- MOTION:** **Senator McGee** moved, seconded by **Senator Smyser**, that the Committee send HCR 57 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator Bilyeu** will sponsor the resolution on the floor.
- PRESENTATION:** IdahoSTARS, Idaho Quality Rating and Improvement System (Idaho QRIS).
- Chairman Lodge** extended condolences on behalf of the Committee to the presenters in the death of their colleague, Karen Mason, noting that she had done great work for the Idaho Association for the Education of Young Children (AEYC).
- Melissa Bandy**, Interim Executive Director, Idaho AEYC, stated that Idaho AEYC is a non-profit organization interested in quality childcare and education which has programs throughout the State. Idaho AEYC is dedicated to quality childcare facilities. The mission of Idaho AEYC is to improve professional practice in early care and education; build public understanding and support in our

communities; and maintain a strong, diverse and inclusive organization. She reviewed the history of the organization, and stated that since 1999 it has provided over 4,000 scholarships and opportunities for childcare providers in Idaho, thereby improving the lives of children and families and our community. Idaho AEYC is supported by a partnership between the University of Idaho Center on Disabilities and Human Development, Idaho Children's Trust Fund, miscellaneous donors, and community grants. She stated that Idaho AEYC does not receive State funds or tax dollars.

**Ms. Bandy** advised that AEYC is a proud initiator of the innovative and nationally recognized project IdahoSTARS, a professional development system including the childcare quality rating and improvement system (QRIS). She stated that IdahoSTARS is the cornerstone of quality child care in Idaho. It is a voluntary program designed to provide training in child development and education, and provides assessment of child care facilities based on national quality standards. She advised that approximately 61 percent of Idaho's children under the age of six are in licensed childcare and approximately 39 percent are in childcare settings where a license is not required.

**Ms. Bandy** introduced **Jane Zink**, Quality Rating and Improvement Systems Director, IdahoSTARS, who reviewed the QRIS program. She stated this is a voluntary program for childcare facilities across the State which launched statewide on January 1, 2010. It is a rating system using a scale of one to five stars. The focus of the rating system is to let parents know about the quality of care their child is receiving. She advised this program has been under development since 2004. The program was designed through site visits, focus groups, independent consultation and a national QRIS study. The goals of QRIS center on family and helping parents understand what quality looks like, and why they should request it. She stated that a quality early childhood experience results in fewer behavioral problems, higher graduation rates, better jobs, stronger families, and more community minded citizens. QRIS helps parents make informed decisions. As childcare facilities are rated, those ratings will be published on childcare referrals from the resource and referral offices across the State. Once rated, a facility may advertise their star rating. The standards considered in the rating process are:

- Environment
- Professional Development
- Strengthening Families
- Group Size
- Education
- Inclusion
- Child-to-Staff Ratio
- Business Practices

**Ms. Zink** stated that child care providers have a unique relationship



with families. Trained providers see signs of daily stress and can connect families to existing resources. She advised that the QRIS program implements a child abuse and neglect prevention framework that focuses on families building strengths through networking and access to resources.

**Ms. Bandy** thanked the Committee for the opportunity to appear and present this information, and advised the Committee that the QRIS was built through child care block grant funds, which are federal dollars coming to Idaho. In order to grow and sustain this important project AEYC will be seeking partnerships with other stakeholders who will benefit from this system. She stated they would be open to any comments and suggestions the Committee may have.

**Senator Smyser** asked if the federal block grants are provided through stimulus dollars? **Ms. Bandy** advised that there is money coming from stimulus dollars being used to provide some of the incentive piece of QRIS, so after a provider has applied and received a rating they do get incentives through that stimulus money. She added that the childcare block grant funds have an eight percent allotment for quality, and those funds come in through the Department of Health and Welfare to the University of Idaho, and then Idaho AEYC receives those funds. **Senator Smyser** asked how much money is available in the next year for this program? **Ms. Bandy** indicated fiscal year 2011 will begin in July, and about \$900,000 was budgeted for fiscal year 2010. **Senator Smyser** asked how this is working with day care licensing in the home? **Ms. Bandy** advised that QRIS actually incorporates childcare licensing, so if a provider wants to apply to the QRIS, they must be licensed within their city with a more stringent license or a Statewide program.

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

**Chairman Lodge** thanked **Ms. Bandy** and **Ms. Zink** for the informative program update.

**Ms. Bandy** advised that a bench will be placed at the Ann Frank Memorial in memory of **Karen Mason**. There will be a dedication during the Week of the Child, April 11-17, 2010, and she will send an invitation to the Committee Secretary.

**ADJOURNMENT:**

**Chairman Lodge** announced that a hearing only will be held on Wednesday, March 10, 2010, related to S 1391, relating to Emergency Medical Services System Authorities. Due to the number of guests expected, the meeting will be held in WW02. She asked the Pages to be available early to make sure all guests are signed in.

There being no further business to come before the Committee,  
**Chairman Lodge** adjourned the meeting at 3:35 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 10, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

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

**MINUTES:** **Senator Hammond** moved, seconded by **Senator LeFavour**, that the Committee accept the minutes of the February 22, 2010 meeting as written. The motion **carried by voice vote**.

**S 1391** Relating to Emergency Medical Services System Authorities.

**Chairman Lodge** announced that this would be a hearing only. The bill will be presented and testimony will follow by those in opposition to and in support of the bill. She asked that those wishing to offer testimony stick to the subject of the bill, not repeat testimony, and limit testimony to three minutes or less.

**Teresa Baker**, Deputy Prosecuting Attorney, Ada County, representing Ada County and the Ada County Ambulance District, presented S 1391. She stated that she has served on the EMS Code Task Force on behalf of the Idaho Association of Counties for the past four and one-half years. The Task Force is comprised of members representing:

- Idaho Association of Counties
- Association of Idaho Cities
- Idaho State Fire Commissioners' Association
- Idaho Fire Chiefs' Association
- Idaho Hospital Association
- State EMS Bureau
- EMS Physician Commission

**Ms. Baker** provided a map of EMS services in each district (see Attachment 1), and a chart showing the EMS revenues by district (see Attachment 2), and letters of support (see Attachments 3a, b,

c, d, and e). She stated that existing laws have resulted in overlapping jurisdictions without a method for shared governance and the coordination of services among and between ambulance districts, fire districts, counties and cities. The lack of a mandate for coordination has led to inconsistent levels of patient care, conflicting medical direction, funding issues, and local disputes have left some areas of the state without emergency medical services at all. The charge of the Task Force was to come up with a solution for the conflicting language between the Fire District statutes, the Ambulance District statutes, and State EMS statutes. She advised that the Task Force has worked diligently, putting in over 3,000 man hours at 35 meetings, working with over 60 drafts of this legislation. She stated the Task Force reached a consensus, but no formal vote was taken, allowing time for each association to go back to their members to seek support. Realizing that some associations did not present the Task Force consensus to their membership, the Idaho Association of Counties drafted legislation. The Task Force came back to the table at that time and has worked diligently over the past three months to bring this legislation, to resolve conflicts under existing ambiguous and archaic statutes governing emergency medical services.

**Ms. Baker** reviewed the proposed legislation section by section and stated that it will provide a framework for emergency medical service providers and agencies to coordinate efforts between local providers, and assure accountability and viability of the system while maintaining local autonomy. She advised this legislation will create an effective and efficient systems approach that is centered around quality and timely patient care, limit the duplication of services, and make best use of taxpayer funds. She added that Licensed air medical service providers are not affected by this legislation, because those services are covered by federal law.

**Ms. Baker** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**Chairman Lodge** invited questions of the Committee. **Senator McGee** commented that knowing the amount of testimony to come, the Committee will have questions for **Ms. Baker** as the testimony progresses.

**TESTIMONY:**

**Chairman Lodge** introduced **Dia Gainor**, Chief, Bureau of Emergency Medical Services, Department of Health and Welfare, and commended her for a national award she recently received for exhibiting the drive and tenacity effort necessary to develop improved EMS Systems, resolve important EMS issues, and bring about positive EMS Systems changes throughout her career. She thanked **Ms. Gainor** for honoring Idaho with her service.

**Ms. Gainor** thanked **Chairman Lodge** for her comments, and spoke **in support** of S 1391. She stated the Bureau is responsible for regulation and licensure of EMS personnel as well as all local EMS agencies in the State. As such, the Bureau has a statewide perspective and array of data about how local EMS agencies and fledgling systems perform. The Bureau worked with the EMS Task Force, providing statistical support, minutes and an expert facilitator. She stated that as regulator of the EMS Systems in Idaho, the Bureau is of the firm belief that shared local governance will stabilize and improve EMS System performance, efficiency, and accountability to the public. She provided the Committee with a history and facts about EMS service in Idaho. She stated that for the first 20 years of EMS service in Idaho, issuing a state license was a victory; that is simply not the case any more. She noted that anyone can be a good Samaritan or provide first aid to their neighbor, but when an organization gears up with medications, skills and devices, that if used wrong will kill people, licensure is necessary to protect the public. She stated current licensure standards lack any connection whatsoever to what a unit of local government might desire or oppose.

**Ms. Gainor** advised that EMS service has become a fairly complex self-selected arrangement, with diverse and overlapping services, or worse competing services. She added there are no-man lands in Idaho where there is no authority maintaining an EMS system. This legislation would transition from exclusive State control of EMS agency licensure issuance to one that is shared with a local board that has responsibility for all aspects of EMS operations and performance. She provided percentage statistics related to Idaho's EMS agency classifications, EMS agency service levels, and licensed EMS personnel, as well as EMS agency distribution within counties. She stated that to be stable and successful in the future, local EMS systems need to achieve a new level of efficient personnel and vehicle performance, and resource and revenue sharing through unprecedented collaboration, and, more importantly, documented business relationships. She advised that Kootenai County has demonstrated success with this approach. This legislation creates regionalized, at least on a countywide basis or larger, building blocks to improve the overall system of care to patients in the out-of-hospital setting.

**Ms. Gainor** provided the Committee with newspaper headlines and articles from around the State within the last 14 months suggestive of EMS challenges faced at the local level. She stated that the Task Force meetings brought to light these problems which the Bureau feared was occurring in the field, at the scene, and at the patient's side. She cited examples of competing services racing each other; a second ambulance blocking the first one from transporting a patient; forced rendezvous, where the EMS transporting a grandmother having chest pains had to pull over and drag her on a gurney to another ambulance; and verbal and even alleged physical confrontations between quick response unit personnel. She advised

that while interagency conflict might be the most sensational problem this legislation was intended to address, there are other equal troubling realities in the Idaho EMS system. Those include widespread financial, operational, and clinical despair. Systems throughout the State are perhaps unknowingly relying on a fragile and failing volunteer system. These dedicated, well equipped, well trained individuals meet the same standards as their fairly paid counterparts, but they are growing older, and we are not seeing them being replaced by younger EMTs. She provided statistics related to EMS complaints in Idaho.

**Ms. Gainor** concluded her remarks by advising that the Bureau's current scope of laws and rules do not provide the means for effective resolution of these matters. If a solution that is locally oriented on a countywide or larger bases is not promulgated, the State will be derelict in its duty if it does not bring this matter to the Legislature's attention with a solution resting in the State's hands. She stated she would prefer not to go there.

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

**TESTIMONY:**

**Roger Christensen**, Bonneville County Commissioner and Task Force Member, spoke **in support** of § 1391. He stated that **Ms. Gainor** covered many of the points he wanted to bring to the Committee, and also complimented her, stating that the award she received was very well deserved. He asked that as the Committee evaluates the testimony they hear today, they keep one thing in mind – what is in the best interest of the patient. He stated it would be naive to think that the citizens of one jurisdiction do not travel outside the jurisdiction and need other EMS service. We have a shared responsibility to make sure that we are cooperating in a manner to provide this service for them. He advised that after the substantial time expended and multiple drafts of proposed legislation that came before the Task Force, it is frustrating to hear complaints by those who oppose this effort that they have not had enough time or an opportunity for proper input into this process. He stated the goal of the Task Force is to establish a system with local input rather than have complete oversight by the State. The idea of this piece of legislation is that we put more of that control in a board, whether it be through the county, because that is the geographic area, or through an alternate form of governance that will allow local input. He stated he has also been frustrated by the unwillingness of some of the organizations who oppose this legislation to bring forward positive solutions or proposals that would be productive in resolving some of their concerns.

**Mr. Christensen** stated that this legislation is the product of hard work of many dedicated officials and professionals, and that until all entities believe in a systemwide approach instead of a going it alone approach, the Task Force does not believe that further discussions

will bear any fruit. He concluded his remarks by stating that Idaho has three options: (1) we can leave things the way they are with each entity doing their own thing, which according to testimony puts people's lives at risk; (2) we can accept a system anticipated by this piece of legislation, which will create a systemwide approach with local input; or (3) we can advocate for stronger state control over the licensing process, recognizing that a license from the state is a grant to provide this service with the state having the right to set the rules. He added that he is on the rulemaking task force for the Bureau, and should this legislation not pass, there will be a push for a stronger role for the state in determining the impact of a new service on existing services.

**TESTIMONY:**

**Juan Bonilla**, Fire Chief, Donnelly Rural Fire Protection District, spoke **in support** of S 1391. He stated that fire and EMS personnel from Valley County attended Task Force meetings as observers and provided input from a rural Idaho Fire/EMS entity. Valley County was able to create its approved governance, Administrative Council and Operations Plans and Bylaws by using the model created by the Task Force. He stated that legislation is still needed because many of the State's fire districts and cities are under the impression that they have complete autonomy and governance of their EMS transport and non-transport agencies, and this is not the case. He indicated the Board of County Commissioners in each county actually is responsible for governance under *Idaho Code*, Section 31, Chapter 39. He stated the proposed legislation would be a means to create an open line of communication for all EMS transport agencies within the county, along with the county commissioners and the medical directors. In the event personalities change in the groups, the proposed legislation could be used to ensure that the EMS system will continue to operate despite the ebb and flow of continued elections and appointments. With use of this proposed legislation, Valley County has created a level playing field within the local government by putting aside its turf boundaries, governance boundaries, and tradition.

**TESTIMONY:**

**Dr. Murry Sturkie**, an Emergency Physician, and Chair of the Idaho EMS Physician's Commission and Task Force Member, spoke **in support** of S 1391, on behalf of the Idaho Chapter of the American College of Emergency Physicians (ACEP). He stated that the Idaho EMS Physician Commission and the Idaho College of Emergency Physicians have both voted to support this bill and recommend its passage. He provided a quote from the National EMS Advisory Council which stated that EMS systems in the United States frequently have no process to design systems that are patient centered in their approach to all components of the system. He stated that Idaho is in a leading position in the nation in dealing with the design and creation of an EMS system from a draftsman's position. He stated the work of the Task Force has been a long and arduous process with the stakeholders across the state and all viewpoints have been reviewed. He added it is true this document does not have the full consensus of all EMS systems across the state, but he believes it represents the best possible approach for

local government control in how EMS will be provided to the citizens of counties and regions.

**Dr. Sturkie** stated of particular interest to the Idaho ACEP, the Idaho EMS Physician's Commission, and to him as an EMS medical director, is the medical directorate portion of this bill. It would help create a mechanism to bring together medical guidance from each EMS agency to the same table, and standardize the care and medical protocols within the system. In some areas of the State patient care protocols can vary from one agency to another, and when respective EMS agencies interact, they are most likely using different medical directives, depending upon the local physician's orders. This tends to create some confusion and conflict between providers and potentially in some cases, compromise patient care.

He stated that just as unified medical direction is essential to optimal patient care, Idaho ACEP believes a united political control is essential to running a smooth EMS system that can incorporate all aspects of the provision of care, and not operate from the perspective of a single agency with priorities that may not be beneficial to the system as a whole. Idaho ACEP believes that these two components, unified medical direction and unified political authority, go hand in hand. He stated that this legislation also brings the stakeholders (EMS agencies, hospitals and physicians) of the system together as active participants as advisors of the political authority. He advised that all current agencies in the EMS system are grandfathered in and will have active participation in how the new system runs. The county commissioners or EMS commissioners would still have the ultimate decision making authority and would be the responsible party. He stated that Idaho ACEP feels there must be an authority where the buck stops. Otherwise, no one takes responsibility for what happens or does not happen.

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

**TESTIMONY:**

**Joe Doellefeld**, Post Falls, Idaho, representing Kootenai County Emergency Services System, spoke **in opposition** of S 1391. He stated that Kootenai County has a wide variety of agencies, and EMS service was in crisis about eight years ago, and needed to find a better way to provide service to patients. He stated they did not have the luxury of devoting a lot of time to the issue. They recognized the value of the infrastructure in place with the fire agencies – well trained personnel, ready to mobilize, with the ability to respond to emergencies. He advised that within a few months most of the fire agencies got on board, and formed a Joint Powers Board to oversee a fire based EMS delivery system that also included a variety of other quick response unit people, first responders, and existing smaller ambulance services in the county. They signed a Master Provider Agreement where everyone agreed



to provide service collectively, and operate under the Joint Powers Board. The Board is comprised of five individuals, all elected officials, with four members representing providers and one member representing the county. This system has worked well. Outdated equipment has been replaced and the system is financially stable, with no debt. He stated there are about 16,000 patient contacts a year in the system, 8,200 are transports and about 7,000 are non-transports. They operate 16 ambulances, and have 6 paramedic cars also operating. Medics cover the entire county, and it is not uncommon to see a Post Falls ambulance in Coeur d'Alene or a Coeur d'Alene ambulance in Post Falls. They work together under the same Joint Powers Board, and it works very well. He stated that under the Kootenai County EMS System, the patient is the first criteria, standards for delivery of that patient is the second criteria, service and response is another criteria, and one of the most important pieces of criteria is the ability to continue service, so financial stability is important.

**Mr. Doellefeld** advised that Kootenai County EMS System was one of the first areas in the State to come together and make their system work, and they are very proud of it. They feel some gains have been made with this legislation, however, they feel some areas of the proposed legislation still need a little more work so that we do not jeopardize current systems that operate well. He stated the governance portions of the bill, Sections 31-5903 and 31-5904 may present a problem for the Kootenai County EMS System as it is now structured. Section 31-5914 related to change in EMS agency services, vests too much authority with the State, and some should stay local. Section 31-5921 related to terms of office of board members, creates another election which is not needed. Section 31-5930 related to non-emergency medical transport creates concerns. He advised In some cases Kootenai County EMS uses paramedics for CCT's and meds and in some cases nurses are used. This language may not allow the use of nurses, which they sometimes need to do and the doctor would like them to do.

**Mr. Doellefeld** stated that Kootenai County EMS System is in full support of the medical directorate part of the legislation and agrees with the testimony of **Dr. Sturkie**. He stated everyone needs to be on the same page with standards. That portion of this legislation is the most important because it goes back to why we do what we do, and that is to serve the patient.

**Chairman Lodge** thanked **Mr. Doellefeld** for his testimony and pointing out his areas of concern.

**Senator Hammond** thanked **Mr. Doellefeld** for traveling so far to appear before the Committee. He asked if it would be fair to summarize his concerns by saying, we recognize that in the State of Idaho we do need some legislation along this line, but we are looking for some latitude so that areas like Kootenai County who have their act together would be able to continue their system. **Mr.**

**Doellefeld** responded that there are a few agencies within the State that do have their act together, and perhaps grand fathering their systems is an option. He stated they would be happy to work with whatever legislation because they would like to see the rest of the State operate like Kootenai County.

**Chairman Lodge** stated she understands that Kootenai County EMS System would be grand fathered under this legislation. **Mr. Doellefeld** indicated he had not been able to find that language in the bill. **Chairman Lodge** asked **Ms. Baker** to respond. **Ms. Baker** advised that the Task Force actually did work with Kootenai County as a model to preserve their ability to continue with their current system, and she believes their operation will be grand fathered in under this legislation.

**Senator LeFavour** asked if there is a specific grand fathering clause in the legislation? **Ms. Baker** indicated that Section 31-5914 is the grand fathering clause that allows all agencies that are operating at the level Kootenai County is operating now to remain in existence, although in this instance it is a well run system, not just an agency. She advised Section 31-5925 provides the ability to form joint powers boards such as Kootenai County now has.

**TESTIMONY:**

**Kenny Gabriel**, Fire Chief, City of Coeur d'Alene Fire Department, spoke **in opposition** of S 1391. He stated that Kootenai County was fortunate to move from a crisis situation to a well run EMS System. The key was people working well together. He stated they were able to almost triple the amount of resources in the county, but even more important, the makeup of the Joint Powers Board provided input from each area of the county. Each member of that board has a vested interest in what happens within the system because it directly affects what happens in local areas. He stated the Coeur d'Alene Mayor and Council are against this bill, because even though it does specifically authorize joint powers boards, it also states very clearly that there will be no pre elected officials on that board, and if they are required to hold another election they could see different entities or a different mind set come in. He added that the language related to critical care nurses is ambiguous. Although Kootenai County has been informed they would have grand father rights, the governance section seems to provide rights for agencies, but does not specifically grand father the Boards and System. He stated that if Kootenai County is the Model, this legislation opens up the door for them to go backwards, not forward.

**TESTIMONY:**

**Mike Irwin**, Chief, Pocatello Fire Department, spoke **in opposition** to S 1391. He indicated Pocatello Fire Department contracts with Bannock County to provide ambulance service for the entire county and also helps with the Fort Hall tribal area. They do utilize volunteers and currently have 13 new volunteers in an EMT class with an average age of 30 years. He stated they have some of the same concerns as previous testimony, and indicated a large concern with the bills requirements of holding a special board

election. He indicated those individuals may or may not have an understanding of EMS systems and procedures, and they would continually have to educate those individuals. He stated that the Bannock County Commissioners do not really want to take a large role in overseeing the EMS system. The Fire Department now provides them with information on all issues and helps them decide the best avenue. He stated he agrees with **Dia Gainor**, that we all need to make patient care the number one concern. He advised that the Bannock County system works well and provides a good service for such a large county with volunteers and professionals.

**Chairman Lodge** assured that all guests who had come from a distance wishing to testify had an opportunity to do so, and queried others wanting to present testimony to see if they could return for a meeting next week. She discussed time constraints with the Committee, and decided to hear additional testimony.

**TESTIMONY:**

**Tom Dale**, Mayor, City of Nampa, spoke **in opposition** to S 1391. He stated he has been a part of the Task Force, and indicated those members who have testified correctly identified that there needs to be something done. The option of doing nothing is not acceptable to anyone. He indicated he is speaking both as the Mayor of Nampa and as President of the Association of Idaho Cities when he raises concerns regarding the governance questions. This is a local issue, and if given the proper tools the local governments can work well. He stated the City of Nampa is working well with the Canyon County Ambulance District and that working relationship continues to develop. The concern is that we do not go backwards by creating some cumbersome governance form that will dismantle some of what we have gained locally in the last two to three years. He advised he does agree with the medical directorate part of the bill calling for a uniform set of protocols and procedures so that anyone responding within a district and county understands the equipment and procedures, and treats the patient as quickly and efficiently as possible.

**Senator Darrington** commented that the numerous messages he has received in opposition to this legislation contain one overriding thing; that is turf. He asked, if the task force is given another four and one-half years, can the turf issue be sorted out? **Mayor Dale** indicated the responsibility for some of that does come down to local officials, and perhaps a very close look at what has been proposed can result in a bill that will be usable and acceptable to everyone. He added his view all along has been, if we can come up with something that mirrors what is happening in Kootenai County, he would support that.

**Chairman Lodge** noted that **Mayor Dale** indicated he favored the medical directorate, and asked if he is against the remainder of the bill? **Mayor Dale** responded that parts of the legislation are very well thought out, he is just not comfortable with the whole package. He added that the governance portion of the bill is his main concern,

and we need to make sure local control can work together.

**Chairman Lodge** requested that he go through the bill and advise her what parts he is in favor of and those he opposes.

**Senator Coiner** noted that although **Mayor Dale** was on the task force, he indicated he was not always present for the meetings, and asked why, if he was not willing to stay with the project, he would come in now and ask for more time? **Mayor Dale** indicated that his responsibilities and schedule did not allow him to be at every meeting, but when he was not there, the Nampa Fire Chief was there representing the city, and he was kept well informed of negotiations.

**Senator Hammond** asked if he has concerns about the composition of the board? **Mayor Dale** said that is correct. **Senator Hammond** commented he assumed a part of that could be because there is a possibility cities could be cut out of that board, and they have a substantial investment in equipment and manpower, and want to make sure that is utilized as well as possible. He asked how he would feel if this bill is used as a guide, but cities and counties are allowed a period of time to come up with a similar plan that reaches the same goals, and if they cannot do that on their own, this is what they must follow? **Mayor Dale** indicated that using the bill as a guide had been discussed at one of the task force meetings, and he believes the comments were that people would not do so voluntarily. He added the addition of a time limit is creative, and perhaps some language like that might work.

**TESTIMONY:**

**Donovan Boyer**, Garden Valley, Idaho, spoke **in opposition** to S 1391. He stated that this might be pretty costly to his county. He stated that Boise County covers a large area and has little population. He advised they would have a tough time putting this type of EMS system together with the \$2,500 in license fees allotted to Boise County. He stated Boise County has a Memorandum of Understanding with the Crouch ambulance service which is a 501c(3) organization. He heard testimony that indicated Boise County has not always been able to handle business, but stated they are taking care of business now. He stated that the Idaho way is to help each other. He mentioned concerns about the grand father rights as the language seems to say that an agency must stay at the level where they are right now and this would not allow a small agency to add services. He stated that there is actually good care all over this beautiful State by people who have dug down into their hearts and provided this service.

**Chairman Lodge** inquired of guests who had not had an opportunity to present testimony if they could return on Tuesday, March 16. She also asked that the Task Force meet prior to March 16 to see if some of the issues could be worked out, and the hearing would be continued on March 16, 2010, at 3:00 p.m.

**Senator LeFavour** commented that she would like to hear more

about the medical aspect provisions of the bill when the hearing is continued. **Chairman Lodge** asked **Ms. Baker** if that would be provided, and she responded that it would.

**Dr. Sturkie** advised that Dr. Curtis Standy from Custer County who worked on the task force might be able to assist on medical questions.

**Chairman Lodge** thanked the presenters and those who provided testimony for the information presented.

**ADJOURNMENT:**

With no other business to come before the Committee, **Chairman Lodge** adjourned the meeting at 4:55 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 15, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:04 p.m., and welcomed guests.

**S 1400** Relating to Appointees to District Boards of Health.

**Senator Robert Geddes**, District 31, presented S 1400. He stated that the purpose of this legislation is to amend *Idaho Code*, Section 39-411, to allow a board of county commissioners the discretion to replace its appointed member on a public health district board when that member is no longer a currently elected county commissioner. He indicated many current health district boards are made up in large part of members who served at one time as county commissioners but are no longer commissioners, and continue to serve on that board as a result of their tenure as a county commissioner. This legislation is permissive, and allows the county board of commissioners to determine if and when a change on that health district board is in the best interest of the county.

**Senator Geddes** requested that the Committee send this bill to the floor with a do pass recommendation.

In response to questions from the Committee, **Senator Geddes** advised that under this amendment if someone on a health district board no longer serves as a county commissioner, the commissioners have the right to reappoint that position on the health district board. He stated there is a provision in the existing code for replacement, but it requires the majority of all of the county commissioners within that health district vote to terminate a sitting board member. This legislation allows the current sitting county commissioners to reevaluate their appointment to that health district board and make a change if they so choose, but they are not required to do so. He noted in one health district, four out of eight

board members continue to serve on the board although they are no longer county commissioners. This will allow the county commissioners in any of those respective counties within that district to make a change if they feel it is in the best interest of the county.

**TESTIMONY:**

**Dan Chadwick**, Executive Director, Idaho Association of Counties, spoke **in support** of S 1400. He stated that health district board members are appointed for a period of five years. County commissioners are elected at two and four year intervals, so it is appropriate that the board of county commissioners in each county make the determination as to who should represent the county on the health district board.

**MOTION:**

**Senator Smyser** moved, seconded by **Senator Darrington**, that the Committee send S 1400 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator Geddes** will sponsor the bill on the floor.

**H 495a**

Relating to Childhood Immunization.

**Representative John Rusche**, District 7, presented H 495a. He stated that this legislation establishes an eight-member commission under the auspices of the Board of Health and Welfare to offer advice on policies and potential legislative action aimed at improving the immunization rates of Idaho children. Members of the Commission include appointees from the Department of Health and Welfare, public health departments, the immunization coalition and clinical practitioners involved in the immunization of children as well as one Senate ex officio member and one Representative ex officio member. This commission offers advice on how the Idaho immunization program can be improved but is not involved in vaccine selection or financing. He advised that House amendments merely add, at the request of vaccine manufacturers and public health departments, that public and private partnerships can be reviewed by this commission, as well as other states best practices on improving immunization rates. He noted that the members of this commission serve without compensation, and the bill calls for a sunset in four years, giving enough time to review and make recommendations and to monitor results.

**Representative Rusche** requested that the Committee send this bill to the floor with a do pass recommendation.

In response to a question from Chairman Lodge, **Representative Rusche** advised that the commission will meet annually. **Senator Darrington** asked why the Senate and Representative members are ex officio rather than voting members? **Representative Rusche** indicated that the thought was that the commission is built of experts in immunization practices who will provide the commission with scientific and technical information. The addition of Senate and Representative ex officio members was intended to provide avenues of communication. **Senator Darrington** commented that he had a problem with that because everyone who serves in the

Legislature votes even though they may not be experts.

**TESTIMONY:**

**Rebecca Coyle**, Division of Public Health, Idaho Department of Health and Welfare, spoke **in support** of H 495a. She advised that the Office of Epidemiology, Food Protection and Immunization, supports efforts to bring physicians, public health professionals, legislators, and other involved parties into a more prominent role in evaluating and providing efforts to increase our State's immunization rates. She stated that the protection of our children from vaccine preventable diseases cannot be accomplished without strong support from our physician community. Therefore, the Department is committed to ensuring the success of this commission.

**MOTION:**

**Senator McGee** moved, seconded by **Senator LeFavour**, that the Committee send H 495a to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator McGee** will sponsor the bill on the floor.

**H 610**

Relating to the Child Protective Act.

**Representative Sharon Block**, District 24, presented H 610. She stated that this bill addresses the issue of the priority of the family in the placement of a child when a child has been taken into protective custody of the Department of Health and Welfare. It amends the Child Protective Act, Title 16, Chapter 16, *Idaho Code*, and the Child Care Licensing Reform Act, Title 39, Chapter 12, *Idaho Code*. The bill clarifies definitions and authorizes the Department of Health and Welfare, consistent with the best interests and special needs of the child, to: (1) consider a priority list in the placement of a child; and (2) expedite the process in making a placement with a fit and willing relative.

She stated that the definition of "relative" has been added to both Acts and includes a child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, first cousin, sibling and half-sibling. She added that this legislation requires that the Department shall make a reasonable effort to place a child in the least restrictive environment to the child and in so doing shall consider, consistent with the best interest and special needs of the child, placement priority of the child in the following order:

1. A fit and willing relative;
2. A fit and willing non relative with a significant relationship with the child;
3. Foster parents and other persons licensed in accordance with Chapter 12, Title 39, Idaho Code.

She advised that this legislation expedites the process of placing a child with a relative by authorizing the Department to grant a waiver or variance of a licensing standard or requirement if it is in the child's best interest. This allows the Department to make an



immediate placement of the child with a fit and willing relative within 24 to 48 hours or less from the time a child is removed from the home. She noted that with present technology, the Department can do an immediate background check and home check to ensure the child's health and safety will be protected. She advised this legislation is consistent with federal regulations and has the full support of the Department. She stated that the parents rights are always primary, and the Department's focus is to reunite the child with the parent.

**Representative Block** requested that the Committee send this bill to the floor with a do pass recommendation.

**Senator Darrington** noted that other legislation identifies "relative" as one to the third degree of consanguinity, and there is good reason for expressing it in those terms. He asked if that expression was considered with this legislation rather than listing individual relatives. **Representative Block** deferred the question to **Robert Luce**, Deputy Attorney General, Human Services Division, Department of Health and Welfare. **Mr. Luce** advised that those words were considered. He added his research found some statutes stating second degree, some third, and from state to state you see all kinds of different things. The problem encountered was that it did not appear as though anyone counted the same way, so you could say second degree of consanguinity and yet end up with totally different results depending how you counted. He came to the conclusion it is much clearer to list exactly who you mean. **Senator Darrington** asked if he would be supportive of putting a consanguinity code back in *Idaho Code* as a reference point, as it used to be years ago? **Mr. Luce** responded that he is not willing to make a blanket statement today, because he is not sure what would be affected, but it certainly is something to look at because this can be confusing.

**Senator McGee** asked **Representative Block** if it is the intention to make sure in these cases that a family member is the priority when it comes to placing a child. **Senator Block** responded, it is. The Department should consider a family first, subject to the best interest, special needs and health and safety of the child.

**TESTIMONY:**

**Randy Hansen**, CASA volunteer and member of Health District V Board of Directors, spoke **in support** of H 610. He stated that he began working on this legislation when he realized there was nothing in Idaho Code that guides the Department of Health and Welfare in placing a child with fit and willing family members, or individuals having a substantial relationship with the child, providing an opportunity for the child to have some kind of stability in their life. He advised that current law requires a foster care license to be able to care for a child. That takes many months of processing, and six months in the life of a four-year-old child is an eternity. He stated that with **Representative Block** he looked at legislation from other states, and this legislation has taken the best practices of other

states and put them together for a win-win situation for everyone. The waiver process provides a wonderful opportunity for a family to keep a child with as little disruption as possible, but the Department still has the discretion to disqualify relatives who are not qualified to take care of the child.

**TESTIMONY:**

**Georgia Mackley**, a member of the Kincare Coalition, spoke **in support** of H 160. She stated there are over 18,000 children being raised by grandparents in Idaho. Only about 1,200 of those grandparents do so with a formal guardianship. Through her involvement with Kincare Coalition she has received calls from Grandparents asking what they can do if grandchildren are turned over to Health and Welfare. She has not had a good answer for them, but this legislation provides a way for them to be involved and in many instances an answer to prayers.

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

**Senator Coiner** commented that he agrees and welcomes the legislation. He asked if Kincare Coalition maintains any literature guiding grandparents in their right and directs them to needed resources to get control of child relatives. **Ms. Mackley** advised there is. The Kincare Coalition has developed a manual, and Careline (211) also gives information and referrals.

**TESTIMONY:**

**Maribeth Connell**, AARP Volunteer, spoke **in support** of H 610. She stated that this legislation recognizes the unique role grandparents play in a child's life and that sometimes the best place for a child who cannot be raised by their own parents is with another family member. She advised that grandparents stepping in to raise their grandchildren represent the fastest type of growing family household in the United States. She stated that expediting the process in which grandparents can legally step into that important role in the absence of the parent, ensures, that no time is lost in putting the children in the best possible environment at a critical time.

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

**Chairman Lodge** inquired how old is too old for a grandparent to take responsibility for a small child? **Ms. Connell** responded this should be assessed on a case by case basis considering health, energy, and number of children involved. She added the decision should be based on the best interest of the child, and that sometimes what you want to do is not always what we should do.

**TESTIMONY:**

**Dr. William Rainford**, Lead Legislative Advocate for the Roman Catholic Diocese of Boise and Catholic Charities of Idaho, spoke **in support** of H 610. He indicated his work experience and personal

experience as a former foster parent who adopted his daughter from the foster care system, has taught him that nothing heals a child's broken soul like the love of a close relative or known friend who is able to promise a forever relationship. He stated that this legislation ensures that when a close and appropriate relative is available, the injured or neglected child will be placed with the relative and urged passage of this bill

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

**TESTIMONY:**

**David High**, Vice President, Idaho Voices for Children, spoke in support of H 610. He stated that Idaho Voices for Children is a statewide organization that works using data to find cost-effective and strategic policy solutions to problems facing Idaho's youth. He stated that experts explain that outcomes are usually better when children are cared for by relatives than when they are cared for in the foster care system. This legislation reflects this reality in our public policy by creating a placement priority with competent and fit relatives. He stated expediting the process provides a very real and important benefit to Idaho's children.

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

**Senator Coiner** noted that he feels this is a great piece of legislation, but asked if we have safeguards against the yo-yo effect of parents coming back into the child's life after rehabilitation. **Mr. High** indicated he would defer that question to an attorney for the Department. He stated it is his opinion that the benefits of this legislation for the stability of a child during the interim is still a plus regardless of what happens with parents after rehabilitation.

**TESTIMONY:**

**Nicole Sirak**, Executive Director, Family Advocates, spoke in support of H 610. She reviewed the role of Family Advocates and the CASA program in child abuse prevention, and stated this bill will help Family Advocates better serve foster care children. She advised that Health and Welfare's up front support in the last two years has increased the number of families that are voluntarily working with the child protection system, but for those who are coming into the system they are seeing a dramatic increase in the number of sexual abuse cases and the severity of child abuse. She added that as the recession continues to put toxic stress on children and families they are bracing for this horrible trend to continue. She stated that kinship care is the most important safety net and first line of defense in helping keep children out of the child welfare system. She advised that about 20,000 Idaho children are being raised by grandparents and kincare givers, and if even half of these children were to enter the child welfare system, the cost to communities and taxpayers would be significant. She stated that Family Advocates supports this legislation because it: (1) expedites the process to

place abused and neglected children with capable and willing relatives; (2) puts relatives in a better position to become foster care parents; and (3) represents innovative and cost neutral legislation, an important component in this budgetary environment.

**TESTIMONY:**

**Susan Dwello**, Foster Care Program Specialist, Idaho Department of Health and Welfare, took the podium to answer questions of the Committee.

**Senator Darrington** posed questions related to provisions for placement of a child with relatives; whether a child who might be living with relatives could continue to live with relatives during the placement process; what “expedite” really means; and how, with the current budgetary constraints, the Department can expedite and properly monitor this process? **Ms. Dwello** confirmed that with this legislation there will be three ways a relative may be granted care of a child: (1) by licensure, which is the usual way to accomplish foster care; (2) by a limited variance; and (3) by waiver. She added that a limited variance or waiver would also lead to licensure. She stated that the child would be placed with a relative immediately after an expedited assessment, and be able to remain in the home while the case is pending. She advised that “expedite” means to place the child in the home of a relative or fictive kin, a family that had a significant relationship with the child, prior to foster care licensure. She advised that this legislation will line up with changes to Federal Bureau of Investigation rules that allow an immediate criminal history check of the adults, so that the Department is assured the child is going into a home that is free of any criminal offenses that would disqualify the relatives from providing fit care for the child. Following placement the Department will continue to fully license the family. She stated the Department will continue to oversee the situation by providing monthly visitation to that family and the child within the home, and the plan for the child will be reviewed by the court on a six month interval.

**Senator Darrington** commented that this is important legislation that will make a difference, but again stated his concern that the Department will have less manpower to do more work to try to expedite and monitor this process.

**Senator Hammond** commended the sponsors of this legislation, and noted that to be able to send a child to a relative or a fit and willing non relative is a great option for foster care. He noted, however, that the legislation allows a variance or waiver for a relative only, and asked if it is intended that a non-relative not be allowed that same variance or waiver? **Ms. Dwello** advised that a waiver is defined as a non-application of a licensing standard, whereas a variance is another way of meeting a licensing standard. For example, a variance might apply if the family does not have safe water but provides bottled water instead; that would meet the intent of the standard. The waiver would be issued for a non-safety standard, like training. Although training is beneficial to a relative

and non-relative, based on a case by case basis a decision could waive the requirement for training for a relative only. The expedited placements are placements that are considered non-licensed placements following up with licensure. Federal law prohibits the Department from doing a waiver for fictive kin or non relatives, but it is able to do a variance to expedite the placement.

**Senator Hammond** then asked if the Department is unable to do an expedited placement for a non relative? **Ms. Dwello** responded that they are able to do an expedited placement for a non relative, but they are prohibited from using a waiver in that placement.

**Senator Darrington** noted that the legislation gives the Department rulemaking authority and asked if that situation would be covered in rules that will come before the Committee next year, and if so, it is his assumption that those rules will not be so restrictive and so bureaucratic that the Committee cannot wade through them with regard to what should be done for the children? **Ms. Dwello** responded that the Department will be taking a look at the definition of “variance” and “waiver” in the rules, and will determine if there are any needed changes to those rules.

**Senator LeFavour** commented that the legislation is very well thought out, and asked if there is a difference between compensation for a non relative versus a relative? **Ms. Dwello** advised there is no difference in reimbursement for room and board. **Chairman Lodge** asked what the current reimbursement rate is? **Ms. Dwello** advised it is based on the age of the child. For ages 0 to 5 years, the rate is \$274 per month; for ages 6 to 12 years, the rate is \$300 per month; and for ages 12 and above, the rate is \$431 per month.

**Senator Coiner** asked for a review of the foster care process and at what point the child is returned to a parent? **Ms. Dwello** advised that when a child is removed from a home by law enforcement or the court, the child comes into the care of the Department, and at that point the Department will make a placement decision. Based on the expedited process, they are able to make that placement right away, but within 48 hours a child being removed, the case must be presented to the court at a shelter care hearing. At that hearing the judge determines whether or not the child should remain in the Department’s care, and within 30 days an adjudicatory hearing is scheduled. At the adjudicatory hearing evidence is produced and there is a decision by the judge, or it could be stipulated to, that the child will remain in the custody of the Department. At that time, because of the Adoption and Safe Families Act and other legislation, both federal and state, the Department is required to make reunification efforts for the child with the birth family, unless the court rules there are aggravating circumstances. Within 15 months of a child coming into care, the Department must go to court with a permanency plan. She stated the Department’s goal is to find stability for the child, first, with the birth family, and if that is not

possible, they work with the current placement – the grandparent or fictive kin. All along the way there are court reviews of the placement and the family's ability to meeting the terms of their case plan.

**Representative Block** concluded her remarks by stating that this legislation will help keep families together at a difficult time and stressed the importance of placing relatives on the priority list for placement of a child.

**MOTION:**

**Senator Hammond** commended all grandparents who take on the difficult task of raising grandchildren, and moved, seconded by **Senator Coiner**, that the Committee send H 610 to the floor with a do pass recommendation.

**Senator Darrington** noted there is no emergency clause on this legislation. If it is passed by the Senate and signed by the Governor, it will be effective on July 1, 2010. He stated he hopes that there will be a degree of reasonableness by the Department in the interim. Department heads nodded in agreement.

The motion **carried by voice vote**.

**PRESENTATION:**

**Director Brent Reinke**, Chairman of the Idaho Criminal Justice Commission (ICJC), provided an update on the current work of the ICJC and how it intersects with Health and Welfare issues. He reviewed the establishment and membership of the ICJC, and thanked members of the Committee for attending some ICJC meetings. He advised that the Commission is funded by members, with no general fund appropriations, and has eight subcommittees, all headed by very competent professionals. He stated a recent Idaho Supreme Court decision dealing with the designation of violent sexual predator (VSP) has been a significant issue for ICJC, and legislation is being developed to address the situation. In the interim, ICJC has established a plan to notify law enforcement 21 days prior to release of any individual who has been designated as a sex offender, and those individuals will have two working days within which to register when entering their counties. He advised that the Subcommittee on Gang Strategies has completed recommendations to address Idaho's growing gang problem.

**Director Reinke** introduced **Landis Rossi**, Program Manager, Division of Family and Community Services, Department of Health and Welfare, who also serves as Chairman of the Subcommittee on Children of Incarcerated Parents, for a review of the work of that subcommittee. **Ms. Rossi** advised that the children of incarcerated parents are five times more likely than their peers to end up in prison, and studies show one in ten will be incarcerated before reaching adulthood. Through a random sample at the Department of Corrections, it is estimated that 8,725 children in Idaho have a parent who is incarcerated. She stated the subcommittee has set forth guiding principles, would like to establish tele-visiting between child and parent, and has started a communication pilot program

with female inmates to help them communicate with children.

**Senator Smyser** asked what kind of programs are being implemented with school counselors. **Ms. Rossi** stated that the educational system is a key to this problem because of their close relationship with children. The subcommittee would like to develop a tool kit for teachers that would basically give them information about how you talk to a child with an incarcerated parent, and she would be happy to share that information with her.

**Director Reinke** introduced **Dan Chadwick**, Executive Director, Idaho Association of Counties, who co-chairs the Public Defense Subcommittee. He stated the subcommittee is looking at public defense standards in the State, including qualifications, hiring, training and how offices should be established.

**Director Reinke** advised that the Subcommittee on Regional Offender Management Centers has secured a Byrne Justice Assistant Grant in the amount of \$100,000, and is developing a comprehensive guide for creating a facility that serves state and county needs. He noted that drug and mental health court graduates have been on the increase, while court commitments to term for drug crimes have dropped considerably, and non-violent term offender numbers are down. He stated that the Department of Correction inmate count has increased to 7,500, but the vast majority of those are riders, while the rest of the population is staying pretty close to projections.

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

**Chairman Lodge** asked that **Director Reinke** to explain the term "rider" for the Committee. He stated that a "rider" is a limited program where the offender stays in the jurisdiction of the court and when they finish the rider they are on probation versus being a term inmate where they would be on parole.

**Senator LeFavour** inquired regarding the sex offender classifications and federal laws that were rendering it difficult to set classifications, and asked if that situation is still in place? **Director Reinke** advised that it is, and they are awaiting verification on the Adam Walsh Act from the federal government through the Smart Office.

**Senator Darrington** commented that there is a standoff occurring in that issue. Most of the states in the Union are fighting against implementation of that federal law. Congress seems to not be inclined to back off on it and yet the Smart Office is challenged with implementing it.

**MOTION:**

**Senator Smyser** moved, seconded by **Senator LeFavour**, that the

Committee accept the minutes of the February 23, 2010, meeting be approved as written. The motion **carried by voice vote**.

**ADJOURNMENT:**

**Chairman Lodge** announced that the hearing on the EMS bill has been postponed until Wednesday, and is dependent upon ongoing negotiations between the parties. She thanked **Senator Coiner** for his efforts in the negotiation process.

With no further business to come before the Committee, **Chairman Lodge** adjourned the meeting at 3:40 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary



## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 16, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:01 p.m., and welcomed guests.

**MOTION:** **Vice Chairman Broadsword** moved, seconded by **Senator Bock**, that the Committee accept the minutes of the February 24, 2010, meeting as written. The motion **carried by voice vote**.

**H 537a** Relating to the Social Work Licensing Act.

**Roger Hales**, attorney providing legal services to the Bureau of Occupational Licenses and the professional licensure boards it serves, presented H 537a on behalf of the State Board of Social Work Examiners. He stated that this bill clarifies the definitions and qualifications for a social worker, master social worker and clinical social worker license. It also eliminates the education in related fields as qualifying an applicant for a social work license.

**Mr. Hales** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**Vice Chairman Broadsword** asked if the Board of Social Work Examiners is financially fluid? She also expressed concern, because of experience with other board rules, regarding the language in the bill stating that the required examination would be "approved" by the board. **Mr. Hales** advised that the Board of Social Work Examiners has a positive account balance, and is keeping a close eye on their expenses. He indicated that the language being added to the Qualifications section regarding the examination being

approved by the board, is identical to what was removed from the Definitions section, so no changes were made. The language was just relocated.

**MOTION:**

After Committee discussion and advice from **Senator Darrington** regarding whether this bill is appropriate for the consent calendar, **Senator LeFavour** moved, seconded by **Senator Hammond**, that the Committee send H 537a to the floor with a do pass recommendation, and with the recommendation that it be placed on the consent calendar. The motion **carried by voice vote**. **Senator LeFavour** will sponsor the bill on the floor.

**ADJOURNMENT:**

**Chairman Lodge** reviewed the agenda for Wednesday, March 17, 2010, advising that the epilepsy pharmacy bill will be presented, and the hearing on the EMS bill will be continued. She noted that Senator Coiner has diligently been working with the parties involved with the EMS bill, and the hope is that all parties will be on board with amendments that will be presented tomorrow.

There being no further business to come before the meeting, **Chairman Lodge** adjourned the meeting at 3:12 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 17, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:06 p.m., welcomed guests, and reversed the order of the agenda.

**S 1391** Relating to Emergency Medical Services System Authorities.

**Teresa Baker**, Deputy Prosecuting Attorney, Ada County, representing Ada County and the Ada County Ambulance District, and **Wm. F. Gigray, III**, attorney, representing the Idaho Association of Cities, Idaho State Fire Commissioners Association, Idaho Professional Firefighters Association, and Idaho Fire Chief's Association, informed the Committee that, as requested at the previous hearing on this bill, held on March 10, 2010, the parties involved returned to the table for negotiations on the governance portion of this bill. **Ms. Baker** advised that two additional options resulted from those negotiations, however, the parties were still unable to reach a consensus as to how the governance should be labeled in this legislation. There were too many interests that were not vetted well enough, and the parties believe that asking for an interim study by the Office of Performance Evaluation to address the governance issue and look at what other states have done will be in the best interest of the parties. She stated that all parties agree with the medical directorate portion of the bill and with the scope of what this legislation will do, but need to resolve the governance portion.

**Mr. Gigray** advised that all of the associations participated diligently, attended all the meetings, provided input, prepared several drafts, and arrived at consensus on some issues. Regarding the governance issue, the conclusion was that one part works for some agencies, but not for all of them, and vice versa. He stated that the parties want to go into this with a unified front where everyone is able to agree with the form of governance so that it goes forward and people work together. All parties feel it is a good

idea to take a fresh look at this legislation, and appreciate the efforts of **Chairman Lodge** and **Senator Coiner** in trying to help the parties move forward on this issue.

**Senator Darrington** asked if this bill is ready for amendment at this time? **Ms. Baker** advised it is not, because the parties cannot reach consensus on the governance issue.

**Senator Coiner** asked if the two to four people could be selected who would represent the group and meet to narrow the scope of what an interim committee would be requested to look at. **Ms. Baker** advised that since the most recent negotiations, they have contacted **Representative Rusche** regarding the scope of what the House concerns might be, and have put to rest some of the clinical issues that they might have had. She advised that **Representative Rusche** has given the parties a draft of his proposed language, and that will be reviewed as the parties meet to set side boards so that unnecessary expenses are not incurred by going too far into the scope of issues already worked out.

**Chairman Lodge** thanked all the parties involved in this legislation for the diligent work and multiple proposed drafts. She stated the Committee wants to take good legislation to the Senate floor and on to the House, and want to make sure the people of Idaho are protected with good patient care. She indicated she looks forward to solving this issue at the beginning of the 2011 Legislative Session.

**MOTION:**

Following Committee discussion related to procedure, **Senator Darrington** moved, seconded by **Senator McGee**, that S 1391 be held in Committee, allowing time for an Office of Performance Evaluation study and further negotiations. **Chairman Lodge** commented that a draft, outlining issues for the interim study, should be available at the meeting on Monday, March 22, 2010.

The motion **carried by voice vote**.

**H 534**

Relating to Pharmacists.

**Representative Susan Chew**, District 17, presented H 534, and introduced the co-sponsor, **Representative Janice McGeachin**, District 32. She stated that this legislation will improve safety and quality of life for patients with epilepsy, a condition where abnormal electrical activity causes seizures. By working with physicians, seizures can be controlled with medications for the most part, however, there is a very narrow range that must be identified where the medication works to avoid seizures, and a slight variation in dosage can affect the patient adversely. She stated that pharmacists sometimes select a different therapeutically equivalent drug product when dispensing a drug. Although generic drugs save people money, people with epilepsy who have control of their seizures using prescription drugs sometimes experience seizures, or other adverse effects, when the formulation of their anti-epileptic

drugs is changed. She advised that FDA rules allow a 20 percent variance for generic drugs, and stated that this variance is too much in the case of anti-epileptic drugs.

**Representative Chew** stated this legislation addresses the situation where generic medications are switched by the pharmacy, it simply requires, in cases where a prescriber has designated a medication is to treat seizures or epilepsy, if a pharmacist is going to change the product, they shall notify the physician and the patient. This allows the patient and the physician the opportunity to decide what they should do to deal with the change. They could decide to seek out a pharmacy which is dispensing the version of the drug they have been using, monitor blood levels and adjust the dosage, or just avoid risky activities like driving or swimming until they know how the new version of the drug will affect them. She advised that the House made some changes to this legislation in response to concerns of health insurers to clarify the intent of the bill, and reviewed those changes. She further stated that this bill is not designed to discourage the use of generics.

**Representative Chew** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**Senator Bock** asked if the word “prescriber” on line 23 of the legislation refers to the physician who prescribes the drug.

**Representative Chew** responded it does, but also would include anyone else who is given the power to prescribe in the State of Idaho, such as physician assistants and nurse practitioners.

**Senator Bock** also questioned how the notification to the patient or patient’s representative would take place? **Representative Chew** indicated that when the medication is picked up, the pharmacy would let the patient know that the medication had been changed from one generic to another and the bottle would also contain a sticker advising the patient of the change. **Chairman Lodge** asked why this notification would not occur prior to dispensing the prescription so the patient would have an opportunity to reject the medication without incurring cost? **Representative Chew** indicated the pharmacy’s first contact with the patient is when they come in to pick up the medicine and after receiving the advice they would have an opportunity to reject the new medication. **Senator Lodge** inquired whether the patient would have to pay for the rejected prescription? **Representative Chew** indicated they would not be obligated to pay.

**Representative McGeachin**, co-sponsor of this legislation shared with the committee her personal experience with an employee of a family business who has epilepsy. She related the medication struggle that individual goes through to remain seizure free, and

how a change in medication affects his life, and the productivity of the business. She spoke of the immeasurable costs in terms of quality of life that a patient incurs when medications are altered without their knowledge. She stated this is a simple, straight-forward bill that does not mandate anything.

**Vice Chairman Broadsword** commented that this bill does mandate that the pharmacist take action, does paperwork, and uses his time without any additional compensation, so there is a mandate in the bill. **Representative McGeachin** responded that the pharmacist is not being mandated to make the change in the first place, and is making the decision to change the drug without consulting the physician and patient.

**TESTIMONY:**

**Robert T. Wechsler, M.D., Ph.D.**, Medical Director, Idaho Comprehensive Epilepsy Center at St. Luke's, spoke **in support of H 534**. He indicated that 95 percent of his practice deals with epilepsy patients, and that he sees more Medicaid patients with epilepsy than all other neurologists in Idaho combined. He provided background facts related to the treatment of epilepsy patients and indicated one out of one hundred people will be diagnosed with epilepsy by age 20. He indicated most of the time epileptic seizures can be controlled by medication. The effectiveness of these medications usually depends on maintaining a constant level of the drug in the patient's blood stream. Even though the problem of pharmacists switching generic drugs has been a known issue for a number of years, it has come to a head now because we have a lot of medications to choose from, and many medications have gone generic within the last year or two. A growing body of scientific literature identifies the concern that the substitution from brand to generic and generic to generic lead to problems in epilepsy patients that we do not often see in other diseases. He reviewed recent studies that show emergency room visits by epileptic patients show a change in medication during the previous six months in over 80 percent of the patients. He cited a Canadian study which found that catastrophic costs for seizure incidents outweighed the cost savings for drug substitution. He provided articles related to the risks and costs of anti-epileptic drug substitution.

**Dr. Wechsler** related a personal experience with an elderly patient who was unaware of a drug substitution and incurred substantial hospitalization expense because she did not seek help at the first sign of problems. He stated had he known the substitution was being made, he would have been able to educate her to watch for single seizures and immediately seek help. He indicated that when an epilepsy patient's medication is switched resulting in adverse effects, the switchback rate is four times higher than for many other diseases. He stated he is not opposed to generics; they save money, and there are people who cannot afford to stay on the brand name drug when a generic is available. He indicated writing "dispense as written" does not solve the problem even if a particular manufacturer is designated, because the pharmacy may not always

maintain generics from all manufacturers, and then would be unable to fill the prescription. He stated generics are a reality of everyday patient care. What he hopes this bill does is make the use of those generics safe.

**Senator Smyser** asked what the percentage of generic prescriptions is to non-generic prescriptions in **Dr. Wechsler's** practice? **Dr. Wechsler** indicated he tries to keep patients on the brand drug if possible, because he is afraid of the consequences of switching to generic. If they request generic, because of cost, he tries to direct them to a pharmacy that he knows he can count on to communicate. **Senator Smyser** asked if this legislation becomes law, and the doctor does not get the message and it slips through the cracks, who would be liable? **Dr. Wechsler** responded that if the communication happens, and it is documented, the pharmacist is in the clear, and any medical communication today should be documented. If the message does not get through, that will fall on the physician, but the Idaho Medical Association supports this bill.

**Senator Coiner** commented that this legislation moves the responsibility of notification to the pharmacist, and asked if it would be better for the doctor to educate the patient about their responsibility in dealing with the disease, and the possible effects of switching drugs. **Dr. Wechsler** indicated he does educate his patients, but he pointed out that epilepsy affects cognition and memory in a lot of patients. He counsels his most sophisticated patients to look at the shape, size, and color of the pill, make sure they compare new prescriptions to an old bottle, and read the name of the manufacturer on the label. He stated that whether or not his patients remember that conversation when they get to the pharmacy, or whether or not they are able to even understand that conversation, is one of concern. He stated that if one chooses to make a substitution, with that choice comes a responsibility to notify the patient and the prescriber. **Senator Coiner** indicated that it may not be a business choice to make a substitution, it might be an availability choice that requires the switch, and asked how that plays into this issue? **Dr. Wechsler** stated that is true, and pharmacies he works with already do what this bill outlines. He gets a call from a pharmacy advising they no longer can get a particular medication and asking if it is okay to switch to a different one. He stated we can bypass emergencies with a phone call.

**Senator Darrington** thanked **Dr. Wechsler** for the detail of his testimony, and asked if prescriptions contain the strength of a pill for the pharmacy? **Dr. Wechsler**, stated a specific dose is prescribed. **Senator Darrington** asked if the pharmacist knows the strength of what is being prescribed, whether it be generic or brand name, and if he does, why would he have the authority to mix and not match. **Dr. Wechsler** stated this is an FDA bioequivalency issue. He explained there is a statistical measure called the 90 percent competence interval that a drug is what it says on the label. When a generic drug comes to market it must demonstrate that 90 percent

competence interval essentially overlaps with the brand name within a certain range; they are not required to be 100 percent identical. That 90 percent competence interval can fall anywhere from 80 percent to 125 percent of the brand and still will be considered equivalent by the standard. If you have two generic formulations and one is closer to 80 percent and the other is closer to 125 percent, and they are considered equivalent to brand, they might not be equivalent to each other. He stated that is where patients most often get into trouble. He indicated he has a tremendous amount of admiration and respect for what the FDA does, but they are overwhelmed. They have come up with a system that works most of the time for most of the drugs, but it does not work well for epilepsy. The FDA is recognizing that now, and there is an effort being made to organize some studies to look at these issues as they pertain specifically to epilepsy. **Senator Darrington** commented that he assumed that the pharmacy has equivalency charts to guide them, but it appears that is not possible because of the 80/125 factor, and asked **Dr. Wechsler** if that is correct? **Dr. Wechsler** responded that is exactly correct; when he prescribes a pill containing 100 milligrams of a drug, as long as it falls within the 80/125 range that pill can say 100 milligrams on it.

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

**Chairman Lodge** thanked **Dr. Wechsler** for the educational testimony.

**TESTIMONY:**

**Paula Shaffer**, President, Idaho State Pharmacy Association (ISPA), spoke **in opposition** to H 534. She stated that ISPA opposes this bill primarily because of fear of liability, and feels the bill is unnecessary. She stated it is commonplace now to notify the patient when they dispense a generic as well as place a sticker on the bottle.

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

**Senator Darrington** asked **Ms. Shaffer** if she agreed with **Dr. Wechsler** with regard to some discrepancies within equivalencies? **Ms. Shaffer** responded that he is correct.

**Senator Bock** related a personal example where he encountered a problem after the pharmacy switched from one generic to another. That pharmacy now has to stock a particular generic for his use and he asked why, if it can be done for a non-epileptic drug, it is such a big deal for a pharmacy to do this in general. **Ms. Shaffer** stated it is not a big deal for pharmacies to do that and it is routinely done.

**Senator LeFavour** asked if a sticker is placed on a prescription



when kinds of generics are switched? **Ms. Shaffer** responded yes, and added anytime a change is made a sticker notifies the patient that the tablet may appear different. She stated the pharmacist will open the bottle, show the tablet, and advise that this is the same drug but a different generic and it may appear different but the drug is the same. **Senator LeFavour** commented that if someone has had epilepsy for a long time and has been dealing with the same pharmacy without problems, then all of a sudden a change is made, it is quite possible they might not notice some of those things, and might not be aware of the sensitivity issues. **Ms. Shaffer** responded that is the education piece between the doctor and the pharmacist and the patient. She added that many drug companies are going out of business and being bought by other companies, so generic switches are inevitable. She advised that using the same pharmacy and establishing a good communicative relationship with the pharmacist will benefit the patient.

**Vice Chairman Broadsword** asked if it is standard operating procedure taught in pharmacy schools to counsel the patient, and when does it become the patient's responsibility to talk to the physician about the change? **Ms. Shaffer** stated it is standard operating procedure taught in pharmacy school to counsel patients and interact with them. She added whenever there is a change from a brand to a generic or generic to generic they make sure the patient knows that the tablets may look different and that it is a different drug, so that they can inform us if they have concerns.

**Senator Bock** commented that it seems physicians are placing more responsibility on pharmacists, and asked if there is some policy change driving that? **Ms. Shaffer** advised that there is no policy change. She stated pharmacists all try to have the best relationship they can with physicians so it is just professional courtesy to let doctors know if there is going to be a change.

**TESTIMONY:**

**Ashley Alloway**, an epilepsy patient, spoke **in support** of H 534. She stated her pharmacy has never notified her when medication was changed, and as a result she has experienced breakthrough seizures affecting her quality of life. She described the changes in bodily functions brought on by a seizure. She stated since her incident she has received physician counsel and educated herself on her disease. She advised she has now been seizure free for two years. She feels this bill safeguards the patient and promotes necessary communication between the physician, pharmacist, and patient.

**Chairman Lodge** asked why she had not changed pharmacists? **Ms. Alloway** advised it has only been in the last two years she has become aware of the medication problems, and she now knows what to be aware of and always inspects her medications.

**Vice Chairman Broadsword** commented that under this bill the patient may still get a different generic, all it does is require the

pharmacist to notify the doctor and patient. **Ms. Alloway** stated she does understand that, and is looking at the benefit the bill will have for those individuals who do not know to question a drug substitution.

**TESTIMONY:**

**Rena VanPaepegham**, mother of a child with epilepsy, spoke in support of H 534. She stated her son's seizures were controlled with medication until her mail-order pharmacy substituted his medication when a generic was available. The pharmacy did not counsel her at the time of the switch, but she had been counseled by **Dr. Wechsler** on how important it was to watch the medication. She stated the pharmacy had dispensed a 90-day supply of the drug and due to cost considerations, they used the generic for 90 days before switching back to the brand name drug. During the 90 days her son experienced seizures, and since that time he has taken the brand name drug only, but is still experiencing seizures.

**Chairman Lodge** advised **Ms. VanPaepegham** that this bill would not regulate out-of-state pharmacies.

**Senator Smyser** asked if she realized immediately that the generic drug caused the seizures. **Ms. VanPaepegham** indicated she did. **Senator Smyser** asked if she immediately put him back on the regular drug? **Ms. Paepegham** indicated she did not because the prescription was for a 90-day supply.

**TESTIMONY:**

**Leslie Gottsch**, mother of a child with epilepsy, spoke in support of H 534. She stated she also was not counseled when a pharmacy switched medications for her son. She questioned the change when she realized the cost difference, but was assured by the pharmacist that the medication was the same dosage. After her son had a breakthrough seizure, they consulted **Dr. Weschler**, and it has taken a long time to reverse the effects of the switch.

**Senator McGee** asked if she would explain what a breakthrough seizure is? **Ms. Gottsch** explained when an individual has seizure control, and then something causes a seizure, it is referred to as a breakthrough seizure.

**TESTIMONY**

**Mark Johnston**, Executive Director, Board of Pharmacy, stated that listening to prior testimony related to H 534, it is hard to debate that this Act is not good for patient safety. He advised that the Board took an opposed position to an earlier draft of this legislation, not because it did not protect public safety, but because the Board felt that current Board rules already provided an avenue to correct this problem. **Mr. Johnston** quoted Board rules for the Committee. He advised that the Board also felt this was an issue that should be handled in rule, not statute; felt this issue was not unique to anti-epileptic drugs; heard concerns of hardships from retail drug outlets; heard concerns of liability from pharmacists; and believes, based on a recent New York District Court decision that this is an issue for the FDA, not Idaho. He stated that the current proposed legislation resulted from informal negotiation, and that since the Board has not

convened in a public meeting since the first draft was presented, it has not had the opportunity to change its opposed position. He advised that in the spirit of informal negotiated rule making, he believes the feeling of the Board to be **neutral at this point**, considering the changes the sponsors have instituted.

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

**Senator Darrington** commented that there has been a lot of discussion in the past about the caseload of large pharmacies and incidences of error. He asked if that is an ongoing problem today? **Mr. Johnston** responded that he hears that concern occasionally, but believes it has been lessened with technology. **Senator Darrington** asked if there is still a problem with internet and on-line pharmacies out of state dispensing dangerous foreign drug substitutes? **Mr. Johnston** stated he believes the 2000 Idaho Wholesale Drug Distribution Act solved that issue. He stated the issue is not with mail-order pharmacies registered within the State of Idaho to do business, but internet pharmacies located overseas that are not registered with anyone; that is a legitimate concern. **Senator Darrington** asked if he is comfortable with the recent New York court decision that relieves a pharmacist of liability if he prescribes a similar generic which would be plus or minus 20 percent of the active ingredient of the medication prescribed? **Mr. Johnston** indicated the New York decision ruled it is well beyond the pharmacist's scope of knowledge to not trust the FDA saying that the products were equivalent, and that if the products truly were not equivalent, the pharmacist could not be held liable for that in a change.

**Vice Chairman Broadsword** asked if she understood correctly that these drugs are not always prescribed for epilepsy? **Mr. Johnston** responded that is correct, some epilepsy drugs are used for a wide variety of issues. **Vice Chairman Broadsword** asked him to explain why pharmacists feel they would have a higher liability burden with this legislation? **Mr. Johnston** indicated he has spoken to legal counsel regarding this and that counsel believes the New York case frees the pharmacist from liability under our current system of making the drug product selection, however with this bill and the notification requirements, there will always be a question on whether the notification and/or documentation happens. Often a case does not get to court until two years or more after an incident, and the fear is it could become a he said, she said, pharmacist has documentation, doctor does not, case that would increase liability, whereas that liability would not be there under the current law. **Vice Chairman Broadsword** stated she had heard recently from one Board member who indicated he is still opposed to this legislation, and questioned whether the Board is neutral? **Mr. Johnston** indicated it is difficult when the Board meets quarterly to try to get a feeling of the Board. He stated he has not contacted each individual

Board member, but has been in contact with the Chairman of the Board throughout this negotiation process and feels the neutral position was reached when the legislation was revised to require the physician to note on the prescription that the medication is for an epilepsy patient.

**Senator Bock** made a point of clarification that the New York case would have absolutely no authority in Idaho, and asked if **Mr. Johnston** would look at that question and get back to him with more information. **Mr. Johnston** stated legal counsel has advised that a decision in a New York court has no bearing in Idaho, but it might be used as precedence if a similar case came forward in Idaho, and that a Judge would have to have reason to override it. He indicated he would defer to the attorney on this matter.

**Senator LeFavour** asked if the Board has any concerns about the variability of all generic drugs, and if there is a consideration to take up any additional rules to address this. **Mr. Johnston** advised that this is the first time he has heard the Board publicly debate this issue. The Board agrees with **Ms. Shaffer** that you are taught in pharmacy school to counsel your patient and have a great relationship with your patient and prescribers, and if you are dispensing a narrow therapeutic index drug, you call the physician. He believes this is commonly done, however, sometimes we have to regulate for the few that do not follow what the practice is. He stated that is what this legislation does -- regulates to the few who do not follow good practice -- when there are rules that could address this through a different avenue.

**Senator Coiner** commented this legislation is written narrowly for epilepsy patients, and asked if there is a problem with generics in other diseases? **Mr. Johnston** indicated there are other narrow therapeutic index drugs for treating other diseases. He further stated what has brought this to the forefront are the recent studies quoted by **Dr. Wechsler**. **Senator Coiner** asked if he has a sense of a need for reassessing the rules surrounding the dispensing of generics, the changing of generic manufacturers, or changing from the original drug to the generic? **Mr. Johnston** indicated there are several Board rules that touch on this issue that perhaps solve it from a different angle, and perhaps some of those could be strengthened. He cited as an example the counseling rule, which currently requires counseling "when deemed appropriate." He added that prescribers could change their rules by stating "do not switch" on a prescription, and pharmacists would have to follow that. He stated that the Board would probably not want to question the FDA and put further restraints beyond the FDA on bioequivalence. **Senator Coiner** commented that it seems it would behoove the Board to sit down and look at the rules considering this transition period we seem to be in with many different manufacturers of generics. He suggested we should possibly look at how our pharmacists are trained to deal with this change in generics; we may need some training updates. He noted this legislation may

need to be broader than just dealing with epilepsy and asked if that could be done over the summer so that the Committee could review those rules next session? **Mr. Johnston** responded that there is a statutory authority to handle it in rules, and the Board does believe that is the way to address this issue. They would include all narrow therapeutic index drugs. The Board could and probably would address it, but he cannot predict the results of that, because the results would be contrary to what the FDA has already said is legal and would be more restrictive than what the FDA has put out.

**Senator Coiner** stated he is not asking they be more restrictive, but look at how patients are notified, and if it is necessary in certain cases to notify the doctor and the patient. Maybe it should not be an option for the pharmacist to counsel a patient. Perhaps the rule is that they slow the patient down, talk to him, and say you need to understand your medication has changed. **Mr. Johnston** responded that is exactly right. That would take this beyond the notification rule that it is to a counseling rule. He advised that the Board has this on the agenda for their April 23, 2010, meeting to renew counseling requirements.

**Senator LeFavour** asked if the Board goes the rule route, does it have any authority to compel physicians to notify the pharmacist that the prescription is for an epilepsy patient? **Mr. Johnston** advised the Board does register prescribers of controlled substances, so there is a certain amount of authority over their controlled substance prescribing, but epilepsy drugs are not controlled substances, so the Board's regulation is limited. He stated that if this legislation passes, the Board would be able to discipline a pharmacist who does not follow the parameters of it, but would have to contact the Attorney General's Office to see if they wanted to make an issue out of the physician who did not follow the legislation.

**TESTIMONY:**

**Elaine Ladd**, pharmacist, spoke **in support** of H 534. She advised that her pharmacy does document every day, multiple times a day, because it is their responsibility and ensures patient care. Speaking for herself only, she does not feel liability is a question here. She added if the ownership is placed solely on pharmacists to dispense the same generic and no other manufactured generic, this does cause an interruption in patient care. An example being, if a patient comes in on a weekend and that manufactured generic is no longer available and the pharmacist cannot contact the prescriber. This bill allows the pharmacist to make the change, send a fax, have a technician place a call and leave a message on voice mail, and counsel that patient that the change has been made. We would then educate them on the potential side effects, and advise that they contact their physician on Monday morning.

**Chairman Lodge** asked if the patient would be given a full prescription or just a few to get them through the weekend. **Ms. Ladd** indicated she would give just a few pills to get the patient through the weekend.

**Vice Chairman Broadsword** asked if she routinely counsels her patients? **Ms. Ladd** responded she does.

**TESTIMONY:**

**Allen Frisk**, pharmacist, representing the Capital Pharmacy Association, advised that his organization consisting of 600 pharmacists in the Boise Valley, advised that organization **supports H 534**.

**TESTIMONY:**

**Jim Baugh**, Executive Director, Disability Rights Idaho, spoke **in support** of H 534. He stated the “don’t change the manufacturer” prescription notation suggested by **Mr. Johnson** solves one problem by creating another. It prevents a switch from occurring without physician and patient being aware of it, but also creates a problem for the pharmacist if the specified drug is not available. He stated that the legislation as written will allow the pharmacist to give the patient a replacement drug, notify the prescriber, and counsel the patient. If the pharmacist complies with this legislation by making a phone call or sending a fax, then he has done what the law requires to avoid all liability, and documentation will prove that. Under current law we do not know what a pharmacist must do to avoid liability in these circumstances, and if we pass this bill we will know exactly what a pharmacist will need to do to avoid liability.

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

**TESTIMONY:**

**Joie McGarvin**, representing America’s Health Insurance Plans (AHIP), spoke **in opposition** to H 534. She stated that AHIP is a national organization representing 1300 members, and feels this legislation could have unintended consequences on patient’s access to timely medications. AHIP believes the patient should not have to wait on the dispensing of drugs while the pharmacist tries to get in touch with their physician. She stated AHIP has amendments they propose to address the sponsor’s need for notification, but not hold up the dispensing of the drug so that the patient is not caught in the middle. She advised, that if this legislation is amended, AHIP would remove their opposition.

**Senator Bock** noted we do have some amendments on the table to do just that.

**TESTIMONY:**

**Pam Eaton**, President, Idaho Retailers Association, and President, Idaho Retail Pharmacy Council, spoke **in opposition** to H 534. She noted her arguments have already been made, and concurs that this legislation is not needed. Communication between the physician, pharmacist, and patient is already happening most of the time, and with more education the entire issue can be solved.

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

**Senator Smyser** asked who should be responsible for education? **Ms. Eaton** responded that the physician should educate the patient on how drugs can impact them. **Senator Smyser** asked who would be responsible for educating the pharmacist on his responsibility to counsel the patient? **Ms. Eaton** advised that the Idaho Retail Pharmacy Council would be glad to educate members and remind them to counsel patients regarding generics.

**Senator Darrington** asked if **Ms. Eaton** disagrees with **Dr. Weschler** who testified that “dispense as written” does not work? **Ms. Eaton** responded that if a pharmacist does not dispense as written they can be written up by the Board of Pharmacy and that doctor should see that they are investigated.

**TESTIMONY:**

**Lyn Darrington**, representing Regence Blue Shield of Idaho, stated that she has been working with the sponsor on an amendment to this bill. If the bill goes to the 14<sup>th</sup> Order, and if that amendment is accepted, Regence Blue Shield of Idaho will remove its opposition to this bill.

**Vice Chairman Broadsword** asked if she feels this bill is necessary? **Ms. Darrington** indicated that Regence Blue Shield of Idaho believes that “dispense as written” is fine and that the bill is not needed for current practices, however, with the amendment they will not oppose the legislation and be neutral.

**TESTIMONY:**

**Shawn Barrow**, a pharmacy student, stated that he has watched pharmacists and has often seen counseling on a new prescription, but when a prescription goes from generic to generic that the sticker will be placed on the bottle and a technician will handle the sale, so the pharmacist interaction with the patient does not occur. He has also observed times when the pharmacist does not consult with the primary care provider when generics are switched.

**Senator Darrington** commented that this is not as simple as originally presented and he has a concern on both sides. He noted that the doctor gave compelling testimony, but did not say what he would do if the pharmacist calls and says he is dispensing a generic instead of a brand drug. He can also see the problem created for the pharmacist if the prescription comes in on a weekend when the doctor is not available.

**Senator LeFavour** commented that notification just gives physicians a better chance of knowing what the source of a seizure might be, and that with notification, they can also instruct the patient to be careful and watch for indications of a problem.

**Senator Coiner** thanked the sponsor and **Dr. Wechsler** for bringing this forward and shedding a light on the problem. He stated **Ms. Alloway** is an ideal patient who takes responsibility and monitors her disease well. He does not feel this warrants legislation, and would like to see the Board of Pharmacy address this in rules where

it could be broadened to include more than epilepsy patients.

**Senator Bock** noted when you look at the amendments, they do place an obligation on the physician to reference treatment of epilepsy or seizures on the prescription. This would allow the statute to do something that the Board of Pharmacy cannot do.

**Vice Chairman Broadsword** commented that these are good points, but education of the medical community and the patient is the key. The Idaho Medical Association and Board of Pharmacy should make sure physicians understand the need to write “this is for epilepsy or seizure” on prescriptions, and the Epilepsy Foundation should make sure patients are aware of the possible consequences of changing generics.

**Chairman Lodge** asked **Ms. Alloway** if she is a member of the Epilepsy Foundation. **Ms. Alloway** responded that she does volunteer working with support groups.

**MOTION:**

**Senator Coiner** moved, seconded by **Senator Broadsword**, that H 534 be held in Committee.

**SUBSTITUTE MOTION:**

**Senator LeFavour** made a substitute motion, seconded by **Senator Bock**, that the Committee send H 534 to the 14<sup>th</sup> Order for amendment. The substitute motion **carried by voice vote**. **Senator LeFavour** will sponsor the bill on the floor.

**Chairman Lodge** thanked **Dr. Weschler** and other participants for their testimony.

**Vice Chairman Broadsword** suggested that those wishing to amend this bill get together and coordinate amendments so that all issues are covered. **Chairman Lodge** also invited the Idaho Medical Association to be a part of the amendment effort.

**MINUTES:**

**Senator LeFavour** moved, seconded by **Senator McGee**, that the Committee accept the minutes of the March 1, 2010, meeting as written. The motion **carried by voice vote**.

**Senator Bock**, moved, seconded by **Senator Smyser**, that the Committee accept the minutes of the March 2, 2010, meeting as written. The motion **carried by voice vote**.

**ADJOURNMENT:**

**Chairman Lodge** announced there would be no meeting on March 18, 2010, and adjourned the meeting at 5:20 p.m.



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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 22, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

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

**MOTION:** **Senator Bock** moved, seconded by **Senator McGee**, that the Committee accept the minutes of the March 9, 2010, meeting as written. The motion **carried by voice vote**.

**MOTION:** **Senator McGee** moved, seconded by **Senator Smyser**, that the Committee accept the minutes of the March 8, 2010, meeting as written. The motion **carried by voice vote**.

**H 657** Relating to Immunization Assessments.

**Julie Taylor**, Director, Governmental Affairs, Blue Cross of Idaho, presented H 657, on behalf of the Idaho Association of Health Plans. She stated that this legislation is a trailer bill to H 432, the Vaccine Assessment bill, which was adopted by both the House and Senate earlier this session and has been signed by the Governor. The purpose of the trailer bill is to modify the definition of "carrier" to address a technical issue identified by the Department of Insurance and also an issue affecting foreign insurers. The further purpose of the trailer bill is to provide clear authority to the Department to impose and collect the mandatory assessments for the vaccines purchased by the State and administered to children residing in Idaho and covered by health insurance and health benefit plans.

**Ms. Taylor** advised that **Senator Smyser** will represent the Senate on the Board of Directors established by this legislation. That board will be responsible for determining the quarterly assessment for vaccines that will be levied by the Department of Insurance who will send assessment letters to insurance companies and third party administrators. The assessment funds will be placed in a dedicated

State account and used by the State to purchase vaccines at a highly discounted rate from the CDC. This will enable Idaho physicians to continue having one stock of vaccines for all of the children they vaccinate.

**Ms. Taylor** requested that the Committee send this bill to the floor with a do pass recommendation.

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, seconded by **Senator McGee**, that the Committee send H 657 to the floor with a do pass recommendation, and with the recommendation that it be placed on the consent calendar. The motion **carried by voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**H 656**

Relating to the Idaho Hospital Assessment Act.

**Steve Millard**, President, Idaho Hospital Association, presented H 656. He stated that this bill is a mechanism to help address the shortfalls in the Medicaid program brought about by the failing economy. The purpose of this proposed legislation is to amend the Idaho Hospital Assessment Act of 2008 (IHAA) to allow additional assessments on certain private hospitals to maintain adequate state trustee and benefit funds to the extent that a general fund shortfall exists or as limited by the maximum assessment set forth in the existing statute. He indicated that the IHAA allows private hospitals to leverage federal dollars by putting up what the State general fund would pay to draw down the federal funds. An additional purpose of this amendment is to draw down additional federal matching funds by maximizing reimbursement for allowable costs available through the State Medicaid plan. He pointed out that entities exempt from IHAA are: (1) a hospital that is a governmental entity, including a state agency; and (2) a private specialty hospital that does not provide emergency services through an emergency department.

He reviewed the amendments section by section, and advised that these amendments are designed to be in place for two years beginning with State Fiscal Year 2011, and expiring at State Fiscal Year end 2012. The effect of the sunset is the restoration of the statute to its 2010 status.

**Mr. Millard** further advised that this bill will save the State approximately \$18 million each fiscal year, and another \$7 million will be saved outside the bill by the Department of Insurance doing interim settlements with the larger Medicaid user hospitals, recalculating interim rates for those same hospitals and reducing interim rates for out-of-state hospitals by five percent. He stated that this bill is important legislation to the State's overall budget, and without it, the Medicaid shortfall would worsen by millions of dollars.

**Mr. Millard** expressed appreciation to the Department of Health and Welfare for their creativity in designing this legislation which works as a private-public partnership to help the State in bad times. He requested that the Committee send this bill to the floor with a do pass recommendation.

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

**Senator Bock** commented that he would like to be able to take this idea of perpetual appropriations to JFAC for use. **Mr. Millard** commented that is a good idea.

**Senator Darrington** commented that, in his opinion, the Statement of Purpose for this legislation appears to treat the draw down for maximum reimbursement for allowable costs as an afterthought, while he sees that as a high and necessary provision of this amendment. **Mr. Millard** indicated that is absolutely correct; it is just as important as the first part of the Statement of Purpose.

**Senator Hammond** noted the Statement of Purpose refers to certain private hospitals and asked if “specialty hospitals” and “private hospitals” are two different things? **Mr. Millard** advised that there are three categories of private hospitals: (1) non profit; (2) for profit; and (3) physician owned specialty hospitals. He added that this legislation exempts physician owned specialty hospitals without emergency departments.

**TESTIMONY:**

**Leslie Clement**, Administrator, Division of Medicaid, Department of Health and Welfare, spoke **in support** of H 656. She stated that this legislation is a unique mechanism that Medicaid programs have and it can only be used for certain providers to help them help the Department solve diminishing State general fund dollars. The hospitals came to the table, and helped the Department meet the budget needs of the Governor’s original budget. She advised that this will not solve the huge budget gap that the Department has, but without it we would be in much worse shape. The Department has a Memorandum of Understanding with the hospitals to sit down and evaluate this in the fall of 2011, and to decide what steps can be taken to move away from this complex methodology to something that is a little easier to administer and is more prospective.

**Senator LeFavour** noted that \$20 million was cut from the Medicaid budget this year, and asked if all of that would have been matchable, and if any of it is compensated for by this legislation?

**Ms. Clement** advised that from her perspective the Medicaid 2011 budget approved by JFAC actually leaves the Department with a \$47 million gap, not \$20 million. This legislation does not help solve that; it helps solve the problem we knew we had coming into the session. **Senator LeFavour** asked if that means there is a loss of \$200 million because of the matching funds? **Ms. Clement**

responded it does.

**Senator Bock** asked what motivates the hospitals to participate?

**Ms. Clement** indicated the Department knew it would be confronted with a really tough budget challenge. Had they gone down the usual path and just reduced interim rates to get within budget, the hospitals would have taken a \$125 million cut, so by using this mechanism those federal funds have been preserved so that they do not see such a harsh hit. **Senator Bock** asked if part of the motivation might be the ability to maintain utilization rates – essentially more patients and more money? **Ms. Clement** responded she would not say that, and added this is just allowing them to get money sooner and manage better. She stated that the cost settlement process is a two year process, and you are dealing with interim rates that may or may not reflect your true cost. This gives greater transparency and predictability in terms of what they can plan for. They know what the assessment is, and we work with them by collecting the money in the fourth quarter, which helps them manage their cash flow and helps them stabilize. She indicated she did not feel this allows the hospitals to see more patients or provide more days of care, but it certainly is better than the alternative, which would have meant that they had to eliminate some of their programs.

**Ms. Clement** introduced **Larry Tisdale**, Bureau Chief, Financial Operations, Division of Medicaid, Department of Health and Welfare, who she indicated was responsible for this creative methodology.

**Chairman Lodge** thanked **Mr. Tisdale** and the Department as well as the hospitals for this collaboration to save general funds.

**MOTION:**

**Senator McGee** declared he has a possible conflict of interest in accordance with Senate Rule 39(H), but does intend to vote on this bill.

**Senator Bock** moved, seconded by **Senator Coiner**, that the Committee send H 656 to the floor with a do pass recommendation. The motion **carried by voice vote**. **Chairman Lodge** will sponsor the bill on the floor.

**ADJOURNMENT:**

**Chairman Lodge** advised the Committee that at least one more bill will be coming from the House, and adjourned the meeting at 3:42 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 24, 2010

**TIME:** 3:00 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:04 p.m., and welcomed guests.

**H 653** Relating to the Child Protective Act.

**Judge Jack Varin**, presented H 653. He stated that this bill seeks to amend Idaho Code, Section 16-1633, relating to the duties and responsibilities of a guardian ad litem (GAL) in Child Protective Act (CPA) cases. It has been recommended by the Supreme Court's Child Protection Committee, which includes judges and a broad range of professionals with substantial experience in the area of child abuse and neglect, including representatives of prosecuting attorneys, the Attorney General's Office, public defenders, guardians ad litem, tribal officials, the Department of Health & Welfare, CASA program directors, and private child welfare agencies. This bill makes it clear that a GAL's role is to advocate for the best interest of the child. GAL's are usually non-lawyer volunteers and serve a very important role in child protection cases. They are not, however, the child's attorney or legal representative. Therefore, confusing language regarding representing a child is removed and replaced with the language that the GAL shall advocate for the best interest of the child. The amendment would: (1) confirm current practice and explicitly state that the GAL has a duty to advocate for the best interests of the child; (2) require the GAL to provide a report to the court prior to any adjudicatory, review or permanency hearing; (3) require the GAL, when possible, to obtain the child's wishes regarding permanency and communicate those wishes to the court; and (4) provide authority for the GAL to confer with any person or entity having information relevant to the CPA case in order to make recommendations regarding the best interests of the child. The bill would also remove some provisions in Section 16-1633 that go beyond the scope of what a GAL should be

responsible for in a CPA case.

**Judge Varin** requested that the Committee send this bill to the floor with a do pass recommendation.

**Senator Darrington** commented that in child placement cases the Judge has probably already gathered information and this clarifies the role of the GAL and the role of the child, and asked if that is correct? **Judge Varin** responded that is correct. **Senator Darrington** noted that you cannot say that there is an age at which a child is reliably mature to make good judgments, and that would vary according to the child. He asked if that then falls within the discretion of the judge as to what reliance to put on the wishes of the child? **Judge Varin** indicated that is correct, and it can be a difficult decision. He stated the judge really appreciates the counsel of the GAL. **Senator Darrington** asked if the language of the bill giving the GAL the right to confer with any other individual or entity having information relevant to the child protection case, would give the judge cover in seeking that information, and if so, that is a very desirable part of this proposed amendment? **Judge Varin** indicated agreement with that statement, advising that the other entity could be a school district or another family member, and the GAL can be very helpful in those inquiries.

**Senator LeFavour** asked if there is ever an attorney appointed for the child? **Judge Varin** responded, yes, an attorney can be appointed, who would represent the child's wishes, whereas the GAL represents the best interests of the child. **Senator LeFavour** asked if this clarifies a burden formerly placed on a GAL. **Judge Varin** responded that is correct, there is no need for subsection 6 of the Act.

**Senator Bock** asked **Judge Varin** to distinguish the types of hearing. **Judge Varin** responded: (1) Adjudicatory Hearing - the Court must make a determination as to whether or not the child is properly before the court under the child protection laws; (2) Review Hearing - Judge finds out what is going on; and (3) Permanency Hearing - if a child is under the State's authority for a period of time, there has to be some permanency established and the CPA specifically provides for permanency terminations so that hearing determines what is going to happen with the child.

## MOTION

**Senator Smyser** moved, seconded by **Senator LeFavour**, that the Committee send H 653 to the floor with a do pass recommendation. The motion **carried by voice vote**.

## PAGE RECOGNITION:

**Chairman Lodge** recognized the Committee Pages, Evan Lantzy and Kelsey Kinkle, who provided outstanding support during the session. She thanked the Pages and presented them with keepsake boxes crafted from wood taken from the Statehouse trees. She also presented Evan with a print of the Capitol Building signed by the Governor, Lt. Governor and herself as a thank you for his



assistance above and beyond in helping her navigate the Capitol on “Bertha,” the scooter. Evan and Kelsey both spoke of their future plans and expressed thanks to the Committee for their Page experience.

**ADJOURNMENT:**

**Chairman Lodge** stated there would be at least two more bills for the Committee to hear, and future meetings will be at the call of the Chair. The meeting was adjourned at 2:24 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 26, 2010

**TIME:** 8:00 a.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 8:00 a.m., and welcomed guests.

**MINUTES:** **Senator Smyser** moved, seconded by **Senator Bock**, that the Committee accept the minutes of the March 10, 2010, meeting as written. The motion **carried by voice vote**.

**Vice Chairman Broadsword** moved, seconded by **Senator Bock**, that the Committee accept the minutes of the March 16, 2010, meeting as written. The motion **carried by voice vote**.

**Senator Coiner** moved, seconded by **Senator Hammond**, that the Committee accept the minutes of the March 22, 2010, meeting as written. The motion **carried by voice vote**.

**H 681** Relating to the Medically Indigent; Discuss possible concurrence in amendments for S 1335aa.

**Anthony Poinelli**, representing Idaho Association of Counties, presented H 681. He stated this legislation is recommended by the Catastrophic Board with many of the suggestions incorporated in this bill were presented during the Catastrophic presentation to JFAC. This bill specifies that applicants seeking financial assistance must comply with Chapter 35, Title 31, *Idaho Code*. He reviewed the changes incorporated in this amendment section by section, and stated that the county and state CAT are the last resource, that payment is payment in full and also requires providers to make all reasonable efforts to investigate and collect from the resources listed in the law before submitting to the county commissioners for payment.

**Mr. Poinelli** requested that the Committee send this bill to the floor

with a do pass recommendation.

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

**Senator Bock** asked why we have this bill today rather than two months ago? **Mr. Poinelli** responded that the primary purpose is counties and the CAT fund pay medical bills for individuals applying for assistance. In a number of cases they do not have the capability to actually hold off claims until another resource may be available. State and County would be able to hold payment until a determination is made at the resource level. **Senator Bock** asked if another resource incorrectly denies a claim who has responsibility for sorting that out, or what is the process? **Mr. Poinelli** advised that if there are additional appeals, then it will be a determination that the County and CAT Board is going to have to make whether they want to continue to follow that through. Otherwise, the county could make a determination and it would be up to the CAT board to agree with that. They could make a determination to pay it, and then have a subrogation right against the other resource.

**TESTIMONY:**

**Steve Millard**, President, Idaho Hospital Association (IHA), spoke **in support** of H 681. He stated IHA asked for amendments to this legislation in the House, and the counties agreed with those amendments. After passing the house some other concerns came to light and IHA supports the legislation with those additional amendments.

**TESTIMONY:**

**Woody Richards**, attorney, representing Intermountain Hospital, spoke **in support** of H 681. He thanked the parties for making the changes requested, and stated the goals on both sides is to make the process more efficient, effective and less involved with litigation. He stated the counties and CAT fund would be meeting during the interim to make this legislation more efficient and effective.

**Chairman Lodge** thanked the parties and the Deputy Attorney General for coming to a consensus on this legislation. She inquired if this will generate a savings? **Mr. Poinelli** advised that it could be a fairly sizeable savings.

**Vice Chairman Broadsword** asked if there are more definite numbers? **Mr. Poinelli** indicated it could potentially be \$2 million, but cannot verify that at this time. The legal cost will be where the big savings are.

**MOTION:**

**Senator Hammond** moved, seconded by **Vice Chairman Broadsword**, that the Committee send H 681 to the 14<sup>th</sup> Order for amendment.

**Senator McGee** declared in accordance with Senate Rule 39(H) that he has a possible conflict of interest with this legislation, but intends to vote.

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

**H 667aa**

Relating to Public Health Districts.

**Representative Eric Anderson**, District 1, presented H 667aa. He stated this legislation is the product of work by the Health Districts and DEQ. It is an effort to bring a unified statewide plan forward in dealing with subsurface sewage systems, wastewater treatment, sewage systems and water quality issues. He stated with seven health districts in the State of Idaho, district rules can vary widely from district to district. This bill would make all existing district rules null, void, and of no force and effect. Thereafter the public health district shall have the approval of the Board of Environmental Quality to promulgate rules relating to subsurface sewage systems, wastewater treatment, sewage systems and water quality and such rules must be approved by both houses of the legislature.

**Representative Anderson** requested that the Committee send this bill to the floor with a do pass recommendation.

**Vice Chairman Broadsword** stated that Panhandle District was the only one charging an appeal fee and other districts had figured it into their fee, and asked if that is correct? **Representative Anderson** responded that is correct and this is an effort to unify the costs.

**Senator LeFavour** asked if some health districts have rules more stringent than those considered last year? **Representative Anderson** responded, yes, the five-acre rule is more stringent than any other health district.

**Senator Bock** noted all health district rules will become null and void, and asked if there will be a period of time without rules? **Representative Anderson** advised that the IDAPA rules are in place and there is always a fallback to the IDAPA rules, so there will never be a time when there is no rule.

**Vice Chairman Broadsword** noted in the amendment to the bill it states that all rules will be adopted by concurrent resolution by both houses of the legislature, and asked if that has taken place regarding these specific rules? **Representative Anderson** indicated that the Attorney General has advised there will not be a gap, and this action we are taking today is a review of those rules. **Vice Chairman Broadsword** asked if all the other rules of the health districts will remain in place? **Representative Anderson** responded that is correct, and if the DEQ finds a rule is incompatible with the IDAPA rules they may deal with that on their own. **Vice Chairman Broadsword** asked when the DEQ goes through these rules and looks at them and decide one is inconsistent and they want to reject it, do they then have to bring that to the Legislature, or can they do away with it. **Representative Anderson** responded that it is his

belief that would have to come to the Legislature.

**MOTION:**

**Vice Chairman Broadword** moved, seconded by **Senator Smyser**, that the Committee send H 667aa to the floor with a do pass recommendation.

**Senator LeFavour** commented that this is a major action and she feels more representation should be present from the parties involved. **Representative Anderson** advised that the DEQ was involved in drafting this legislation and have had no one speak in opposition to this legislation.

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

**H 676aa**

Relating to Youth Athletes and Concussions.

**Representative Elaine Smith**, District 30, presented H 676aa. She stated that one in five highschool football players will suffer a concussion at some point in their career. Once an athlete sustains a concussion he or she is four to six times more likely to sustain another. Second Impact Syndrome can develop after an athlete sustains a second concussion before the symptoms of a previous concussion healed. This is fatal more than 50 percent of the time. This injury is not isolated to boys. She stated five youths have died in the United States as a result of sports related concussions last year. She related the life changing consequences of concussions, and provided statistics that concussions occur frequently in all sports. This bill is to provide guidelines for concussion awareness education training for coaches, paid and volunteer, youth athletes, and their parents/or guardians on the nature and risk of concussion and head injury. She advised that this bill as amended has the full support of the Idaho State Board of Education, the Idaho High School Activities Association, the Idaho Medical Association, and the Idaho Athletic Trainers.

She introduced **Representative Liz Chavez**, District 7, who spoke **in support** of H 676aa. She stated this is vital legislation for our young people, and the concussion symptoms are similar to those of Shaken Baby Syndrome. The intensity of play has increased at all levels of education, and training informing everyone of the nature and risk of concussion and head injuries will raise the level of safety for all of our young people engaged in sports activities.

**Representatives Smith and Chavez** requested that the Committee send this bill to the floor with a do pass recommendation.

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

**Senator McGee** noted many students do not want to come out of a

game after injury, and asked if the coach would be liable under this legislation if the student continues and develops further injury?

**Representative Chavez** advised that the coach now has that liability, and this bill will help with liability because of the awareness training.

**Senator Darrington** commented in his experience sports injuries had been well handled by coaches, trainers and doctors, and asked if we must regulate everything? **Representative Smith** advised that the hope is this legislation will bring more awareness training.

**Senator Smyser** noted that the child often hides the symptoms, and asked how intense the education will be for the students?

**Representative Smith** said we are encouraging this training for the parents and athletes, rather than just the coaches and trainers.

**Senator Smyser** asked if this could better be taken up by the Idaho Athletic Association and school boards and put in policy?

**Representative Chavez** stated that in the future she would like to see some enforcement with this; training is a first step.

**Senator LeFavour** asked about the tension between a coach and an athlete, and asked if the coach would feel pressure by student, team and parents unless there is a substantial push toward caution.

**Representative Smith** advised that all parties would receive the same training.

**Vice Chairman Broadsword** asked what the time line for the State Board of Education is to develop and implement guidelines.

**Representative Smith** deferred to **Mark Browning**, who indicated the State Board of Education is already in the process of working with the Idaho High School Activities Association with the intent to link the information they have along with the web site [noconcussion.org](http://noconcussion.org). This information should be available for coaches and parents before the start of the fall athletic season.

**Senator Smyser** asked how this program will be taken into the community for sports that are not sponsored by schools. **Mr.**

**Browning** indicated that one member of the State Board of Education is the president of the Idaho Soccer Association and we will work with that Board member to get the information out to the soccer organizations.

**MOTION:**

**Senator Bock** moved, seconded by **Senator LeFavour** that the Committee send [H 676aa](#) to the floor with a do pass recommendation. The motion **carried by voice vote**. **Senator Bock** will sponsor the bill on the floor.

**S 1335**

Relating to Immunization.

**Chairman Lodge** commented that [S 1335](#) had been amended in the House and she asked **Jane Smith**, Division Administrator, Division of Health, Department of Health and Welfare, to assure the

Committee that the bill still has the same intent with the amendments. She reviewed the amendments and advised that although the language is a bit confusing and unnecessary, she did consult with the Deputy Attorney General with the Department and was advised that although it was clearer before the amendment, the opt out registry is preserved.

**Senator Bock** asked that **Chairman Lodge** summarize the amendment. **Chairman Lodge** advised that her concern was to bring this before the committee to make sure these amendments would not inhibit the Departments ability to get the RFP for their new system and to make sure this language would work with their new system, and **Ms. Smith** has assured us of that.

**Senator Darrington** asked how critical this legislation is, and do we need to accept the amendments or wait a year? **Ms. Smith** responded that her concern is that if we do not get it done this year, with the RFP that goes out we will have to utilize the opt-in statute and that changes the construction of that system.

**MOTION:** **Vice Chairman Broadsword** moved, seconded by **Senator Bock** that the Committee concur with the amendments placed on S 1335 by the house. The motion **carried by voice vote**. **Senator Lodge** will sponsor the bill on the floor.

**MINUTES:** **Senator Hammond** moved, seconded by **Senator Bock**, that the Committee accept the minutes of the March 15, 2010, meeting as written. The motion **carried by voice vote**.

**ADJOURNMENT:** **Chairman Lodge** advised that the Committee may have one more meeting at the call of the Chair, and adjourned the meeting at 9:15 a.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 26, 2010

**TIME:** 3:20 p.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 3:20 p.m., and welcomed guests.

**H 708** Relating to Public Assistance (Hearing Only)

**Leslie Clement**, Administrator, Division of Medicaid, Department of Health and Welfare, presented H 708, statute changes needed to address cost containment strategy. The proposed changes include pricing changes to help align with budget constraints. The changes include both short term and ongoing changes. Short term approaches that stop inflationary adjustments and one-time reductions were built into the Medicaid budget that was submitted to the Governor and approved by the Legislature. She advised that before this session began Legislative Services staff and the Governor's budget staff agreed that last year's one time reductions would need to be continued for another year. These reductions included a continuation of the nursing home payment reduction of 2.7 percent, the freeze on intermediate care facility prices, and the freezes on physician and dental rates.

She stated that the amendments that have not been built into the Medicaid appropriation and are needed to address the projected 2011 shortfall include the removal of potential increases in personal care or personal assistance service rates and an allowance for reduction. These rates are typically increased annually as a result of a study of comparable rates in institutional facilities. If the results show an increase, these rates would be frozen at the 2010 models; if the results of that survey show a decrease, they would also decrease. The proposed amendment also removes language that reflects a 55% supplemental component to cover overhead. When the study is completed, temporary rules will be promulgated to reflect an accurate and current rate. Until that study is complete, the



current component will remain in place as reflected in the federally approved state plan.

The related fiscal impact only relates to the freeze in the rates and does not reflect the 55 percent supplemental component and that fiscal impact is \$941,000 in state general funds for a total fund impact of \$4.6 million.

An additional amendment is the removal of an incentive table affecting nursing homes and intermediate care facilities. Last year this incentive payment was reduced. This proposed amendment eliminates the incentive payment. Given the current economic environment, the Medicaid budget cannot afford to pay this extra amount that is unrelated to patient care and rewards facilities for keeping their administrative costs down. Medicaid already has cost controls in place through caps on indirect costs. When the economy turns around, Medicaid is willing and interested in working with providers on an incentive as it relates to quality and patient care. The related fiscal impact of this change is \$1.1 million in state general funds, for a total fund impact of \$5.3 million.

The last change is new language added to require pharmacy participation in periodic cost surveys. Adding this mandatory survey will assure that we have the most accurate drug acquisition costs for all pharmacies, regardless of their size. The fiscal of this amendment is \$1.4 million in state general funds and a total fund impact of \$6.8 million. The statute changes not already in the Medicaid appropriation are intended to result in \$3.4 million in state general fund savings, for a total fund impact of \$16.7 million in State Fiscal Year 2011.

**Ms. Clements** requested that the Committee send this bill to the floor with a do pass recommendation.

**Vice Chairman Broadsword** asked, regarding the 55 percent supplemental component, if that study, promulgating rules, and amending the state plan could take as much as two years? **Ms. Clement** responded that is correct, and until that is completed the 55 percent would be continued. **Vice Chairman Broadsword** asked where the Department is in that study? **Ms. Clement** responded that cost study has not yet begun, and typically they take some time, it could easily take a year. **Vice Chairman Broadsword** asked if a provider of home health services wants to participate in that cost study, can they volunteer? **Ms. Clement** indicated the Department must have the engagement and collaborative effort with all providers.

**Senator Darrington** asked if she represents to the Committee that all facilities large and small will be treated the same? **Ms. Clement** responded that it is the Department's intent that everyone would be treated equitably under H 708. **Senator Darrington** asked if she is familiar with amendments proposed by the facilities? **Ms. Clement**

indicated she is familiar with those. **Senator Darrington** asked if she represents to this committee that under the amendments proposed all facilities large and small would not be treated the same, or they would? **Ms. Clement** indicated the Department has concerns about the proposal of across the board reductions, because those reductions would hit county based nursing homes, smaller facilities, harder than the larger private nursing home chains. **Senator Darrington** asked if she is suggesting that there would not be equality under the proposed amendments for large and small facilities? **Ms. Clement** advised that is correct.

**Senator Coiner** asked for a further explanation of the efficiency increment payment. **Ms. Clement** indicated that the Department looked at the effect of the incentive payment when it was first introduced in 2000 and it was designed to create a 75 percent eligibility for that incentive. We recently looked at it and found the participation rate has gone up to 80 percent, but when we looked at the facilities that reflected that increase, they were all part of existing large nursing chains, so we cannot see evidence that the incentive payment has really done anything to keep costs down.

**TESTIMONY:**

**Kris Ellis**, representing Idaho Health Care Association, spoke **in opposition** to H 708. She stated her association knew there were bad economic times and repeatedly has gone to the Department and asked to be part of the solution. They were not consulted on this legislation and do have concerns. She stated there are ways to accomplish cuts without impacting providers this severely and still save the State possible more than this proposal. She referenced the Association's proposed amendments, stating that they will bring consensus within the provider community, assisted living and home care services. The amendments do leave in the 55 percent supplemental, because the two year time line for that is a long time. She stated that in the interim what is working should be continued. She questioned how the Department could perform the study at this time, when they previously indicated there was no money for a study. She stated the amendments to Section 2 decreasing each skilled care facility's quarterly rate from 2.7 percent to 6 percent will save the State an additional \$700,000 over what is in the current fiscal note. The Department's proposed changes to the efficiency incentive cut some facilities a lot and some not at all. She stated the association's proposed amendments will allow for equitable cuts to be replaced by the provider assessment, which covers all the nursing homes.

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** asked if her testimony is that under H 708 as written, facilities will not be treated equally? **Ms. Ellis** indicated they would not be treated equally. **Senator Darrington** asked if she was then testifying that under the amendments proposed by the Idaho

Health Care Association that the facilities will be treated more equally? **Ms. Ellis** responded, "Yes." **Senator Darrington** commented that is exactly opposite of **Ms. Clement's** testimony, so someone is right and someone is wrong.

**TESTIMONY:**

**Robert VandeMerwe**, Executive Director, Idaho Health Care Association, spoke **in opposition** to H 708. He stated that the purpose of the assessment created last year was to backfill the cuts that were assessed to nursing home facilities. We have that assessment, it is working, and the first federal funds check is expected within weeks.

**Vice Chairman Broadsword** asked if the assessment is the upper payment limit? **Mr. VandeMerwe** indicated it is. He added it leverages federal funds, and will bring federal dollars in so that no one will be cut more by the Association's proposed amendments than can be replaced by the upper payment limit. He stated that under the Department's proposed amendment there will be some providers that lose a lot of money and others who do not lose any.

**Senator Smyser** asked if **Ms. Clement** would respond to the question regarding the cost of the study, and how does or does not the amendment save the state money. **Ms. Clement** stated that the survey would be done with existing staff. She further stated that the Department's audit staff is reviewing the fiscal impact of the proposed decrease in quarterly rate for skilled care facilities.

**Senator Bock** asked if **Ms. Clement** agrees with any of the amendments proposed by the Idaho Health Care Association. **Ms. Clement** advised that the Department and the Association do not agree. She advised that leaving the incentive payment intact is not something the Department is supportive of. They believe it is a payment not tied to patient care or quality of care and that is an unaffordable payment methodology that really is more of a bonus and not supported in these economic times.

**Vice Chairman Broadsword** commented that the Department was given specific direction to eliminate programs that were not cost effective, prior to eliminating programs.

**TESTIMONY:**

**Bruce Weaver**, Post Falls, Homecare business owner, spoke **in opposition** to H 708. He stated he disagrees with the Department proposal to remove the administrative fee from the statute. As a personal care services agency providing care to the elderly and disabled, he feels they must have some protection under law in order to continue providing quality care. He indicated they cannot maintain the level of employees necessary with a reduction in the administrative fee.

**Chairman Lodge** asked if he is aware of the furloughs the Department has had to implement for employees, and the possibility of closing offices across the State? **Mr. Weaver** indicated they deal

with it every other Friday, and fully understands the need to balance the budget. He emphasized the problem on the facility side of the inability to care for the elderly, and added they care, so they do it and take a loss.

**TESTIMONY:**

**Scott Burpee**, Pocatello, owner of Safe Haven, spoke in **opposition** to H 708. He stated that in a collation meeting this morning they discovered facilities were willing to take more cuts than this legislation will accomplish, so the issue is not the amount of money the state needs to save. He has a problem, however, with taking protections out of statute. He stated they are willing to suspend those protections for a year through a sunset clause, and stated that what happens by removing the incentives for nursing homes is it creates an inverse incentive to cost shift back to Idaho. He added we will see the indirect costs in Idaho go up because of this legislation, and it will outpace the saving relatively quickly. The Department has the ability to renegotiate the incentive and that negotiation did not happen this year. He noted that this bill does not change the rate this year and questioned why take it out when the parties could renegotiate a rate next year and leave it in statute. Mr. Burpee stated that despite the existence of oversight councils in all programs they were not approached about this legislation and had no opportunity for input.

**Chairman Lodge** commented that we have known for some time that there were going to be budget cuts, and asked why he did not go to the Department with suggestions, rather than waiting for the Department to initiate the communication? **Mr. Burpee** indicated he had emailed the Department on numerous occasions. **Chairman Lodge** asked if he included cost saving ideas in those emails? **Mr. Burpee** indicated he did not get into specifics.

**Vice Chairman Broadsword** commented, that no matter how this comes out, she hopes he will continue to generate those ideas and share them with the Department and Committee. **Chairman Lodge** added that the Department and Committee need those ideas, but not at the last minute.

**TESTIMONY:**

**Jason McKinley**, Lewiston, homecare agency owner, spoke in **opposition** to H 708. He indicated that without the 55 percent supplemental payment he will be unable to pay the current operating costs. He asked why this should be removed if it is budget neutral for the next year. He could consider negotiating a cut in that rate, but wants the protection to stay in the statute.

**Chairman Lodge** asked if he indicated he did not know that there were budget problems? **Mr. McKinley** responded he knew there were budget problems, but did not know the scope of the problem.

**TESTIMONY:**

**Branden Beier**, Lewiston, small business owner, spoke in **opposition** to H 708. He stated he is in agreement with previous testimony of **Mr. Weaver** and **Mr. McKinley**.

**Senator Coiner** commented that it may help the Committee if the parties could meet over the weekend to see if they can come to further consensus on these issues. **Ms. Ellis** indicated that Idaho Health Care Association would be happy to sit down with other parties. **Ms. Clement** advised that she would be out of town over the weekend. She acknowledged the fact that this was a fairly unique year and the Department did not maintain the usual level of conversation and negotiation, but it was only two weeks ago that they became aware that this bill would be before the Legislature. They do recognize there is a great problem and this legislation is only a first step toward solving that problem. She stated her staff is presently reviewing the stakeholders and plans during the next three months to set down with committees and discuss the legislative intent language and what solutions can be found. She stated the magnitude of the budget problem is daunting and we need to move forward with this bill as written, but would be glad to meet with the nursing home providers on what can be done with the assessment statute since it provides an opportunity to address any gap in reduction. She assured that the Department would work collaboratively with the nursing home providers on the cost study. **Senator Bock** suggested that there has been a commitment from the health care agencies and asked if someone else from the Department could meet over the weekend to discuss differences? **Ms. Clement** indicated that Department personnel would be available.

**Chairman Lodge** asked if the budget is short \$47 million in state general funds? **Mr. Clement** responded, "Yes." **Chairman Lodge** inquired what will happen to the people who need to be cared for if the state does not have the money? **Ms. Clement** responded that the Department will find it necessary to delay payments to providers as there is not enough money to complete the year. They have asked the larger providers to take a longer holdback so that the remainder of the providers will have a three week delay in payment.

**Vice Chairman Broadsword** noted she heard testimony that when assessments go away the state will be required to pay more, and asked if that is correct? **Ms. Clement** indicated there are two types of assessments, the Hospital Assessment Act and the Nursing Home Assessment Act.

**Senator Darrington** asked if this bill was developed by the Department, Division of Financial Management, or Legislative Services Office? **Ms. Clement** advised that there had been discussions regarding the incentive payment for some time and this legislation was a collaboration between the Division of Financial Management, Legislative Services budget staff, and the Department. **Senator Darrington** asked if H 708 developed after H 701, which passed both houses, was developed, and therefore does the success of H701 depend on the passage of H 708? **Ms. Clement** advised that the appropriation bill was done first and this bill followed it.

**Vice Chairman Broadsword** asked if settlements from pharmaceutical companies to the State come back to the Department or are they rolled into the general fund? **Ms. Clement** responded that they do not come back to the Medicaid budget, even though substantial staff time is required in pursuing the settlements. **Vice Chairman Broadsword** suggested the Department present a cost bill to the Attorney General for staff time incurred.

**ADJOURNMENT:**

**Chairman Lodge** announced the hearing on H 708, will continue on Monday, March 29, 2010, at 8:00 a.m., and adjourned the meeting at 4:28 p.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary

## MINUTES

### SENATE HEALTH & WELFARE COMMITTEE

**DATE:** March 29, 2010

**TIME:** 8:00 a.m.

**PLACE:** Room WW54

**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.

**CONVENED:** **Chairman Lodge** called the meeting to order at 8:08 a.m., and welcomed guests.

**H 708** Relating to Public Assistance (Hearing Continued from Friday, March 26, 2010).

**Richard Armstrong**, Director, Department of Health and Welfare, spoke **in support** of H 708. He provided the Committee with a graph reflecting Medicaid service cost drivers grouped by type of service provider. This chart gives the percentage of reimbursement for hospitals, long term care facilities, pharmacies, developmental disabilities, mental health services, physicians, and dental facilities. He reviewed the figures on the chart detailing each industry's portion of the costs and related those to the shortfall in the Medicaid budget. He addressed the fairness issue that has been discussed by interested parties and the Committee, and indicated the difficulty of that task within the funding formulas that are involved in the Medicaid bill, but indicated it is the Department's goal to be as fair as possible.

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

**TESTIMONY:** **Keith Holloway**, CEO, Western Health Care Corporation, spoke **in opposition** to H 708. He indicated the current regulations were implemented in 1990 as the result of a joint effort of the Department and the provider Community with a goal of developing a sustainable system to control costs and provide sufficient funds to providers to provide care and service to the resident with a high degree of predictability of cost to the State, and that the system has accomplished those goals. He stated with the incentive removal his

facility would lose \$72,000 or the equivalent of three full time CNAs. He stated he would like to have been involved in negotiations with the Department prior to presenting this legislation. He stated that eliminating the incentive and placing the burden of the reduction on the efficient facilities is not equitable and is not sustainable. He indicated there are other ways to cuts costs that are fair and equitable, including (1) a temporary across the board cut for all providers; and (2) increasing the provider cap.

**Senator Smyser** asked if any compromise was reached between the parties over the weekend? **Mr. Holloway** indicated he was not involved in the negotiations.

**Senator Darrington** asked what discussions took place at the time the incentive program was initiated? **Mr. Holloway** indicated the major factor was to try to focus Medicaid funds on patient care and not on home office costs or administrative expenses.

**TESTIMONY:**

**Rick Holloway**, President, Western Health Care Corporation, spoke **in opposition** to H 708. He stated he was a party to negotiations with the Department when the current system was initiated in 2000. He distributed handouts to the Committee related to an analysis of the Idaho Health Care Association's proposal and how it will affect the health care providers. He reviewed those handouts and stated that incentives are not bonuses, but are incentives that encourage facilities to minimize their costs associated with administration. He stated in the past the health care facilities has had an open line of communication with the Department and were included in discussions related to reimbursement rates; that call did not come this year. **Mr. Holloway** further provided statistics related to how the loss of incentive under the Department's proposal would affect the facilities, indicating several providers would have payments cut over \$100,000 per year, while 17 providers will have no cuts, and this does not meet the requirements of a fair proposal. He also presented spreadsheets incorporating the proposal by the Department to eliminate incentives and increase provider assessments to \$4.40 per day and also \$5.50 per day. He stated that under the Department's proposal those facilities gaining the most are the most inefficient providers. He further stated that the proposal put forth by the Idaho Health Care Association would save the state \$6.8 million.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachments 2a, 2b, 2c, and 2d).

**Senator Smyser** asked **Mr. Holloway** to respond to her question regarding the outcome of the weekend meeting. **Mr. Holloway** advised that the meeting was productive, however ultimately the Department did not feel they could modify this bill. **Senator Smyser** asked if that is because of the lateness in the session? **Mr. Holloway** indicated that question would need to be posed to the



Department. **Senator Smyser** asked if the Department's proposal costs the State of Idaho more money than the industry's proposal? **Mr. Holloway** indicated the industry's proposal will generate \$1.5 million more.

**Vice Chairman Broadsword** noted that in the industry's proposal there is a bottom line proposal, but that is not included in the charts related to the \$4.40 per day and \$5.50 per day. **Mr. Holloway** responded that using the Departments proposals the savings are \$5.3 million for both the \$4.40 and \$5.50 because of offset to provider taxes. **Vice Chairman Broadsword** asked if we remove the incentive and increase the assessment what that does? **Mr. Holloway** indicated the assessment of \$4.40 per day would keep the facilities level with the Idaho Health Care proposal, while \$4.40 per day would leave several facilities losing money under the Department's proposal, while others would significantly benefit.

**TESTIMONY:**

**Keith Fletcher**, Administrator, Ashley Manor, spoke **in support** to H 708. He stated he would welcome an invite to participate in the studies and surveys associated with this legislation.

**Vice Chairman Broadsword** asked if he is okay with the 55 percent being removed in this bill because of the assertions the Department has made that they are committed to working on finding the right solutions? **Mr. Fletcher** indicated he would support that and hopes to be a part of that negotiation.

**TESTIMONY:**

**Jim Baugh**, Executive Director, Disability Rights Idaho, called the attention of the Committee to what he believes is a drafting error in Section 1 of the proposed legislation. He stated that he understands the intent of the legislation to be that we will continue to establish a rate for home services based on the salary of people in the nursing home industry plus some supplemental that will cover payroll taxes, benefits, and administrative costs. He stated this bill does not do that. If that was the intent, the words "a 55%" would have been eliminated, leaving the remainder of the sentence intact. When this sentence is removed we have taken out of statute the authorization to allow an administrative supplement, and he does not believe that is what the Department intends to do.

**Senator LeFavour** asked if it is possible to make this correction by going in and out of the 14<sup>th</sup> Order. **Chairman Lodge** indicated she is not sure about the agenda and whether that would be possible.

**Senator McGee** stated he would like to hear from someone from the Department on this question.

**TESTIMONY:**

**Dawn Bingham**, Accountant, Blackfoot, Idaho, spoke **in opposition** to H 708. She expressed concerns about the unstated cost if the 55 percent is cut. She stated it is vital to the industry and many people would be unemployed and several patients would need to go to nursing homes as a result of the decrease.

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

**Vice Chairman Broadsword** commented that the Department realizes the hardship on the home health care facilities and will be doing a cost study to determine the actual costs and will then promulgate rules which would give the facilities an opportunity for input.

**TESTIMONY:**

**Larry Tisdale**, Chief, Bureau of Financial Operations, Division of Medicaid, Department of Health and Welfare, spoke **in support of H 708**. He stated that the weekend meeting may not have brought a meeting of the minds but there is an understanding of the Department's position and work will begin immediately on the issues. He addressed the issue of fairness and stated that the perspective on fairness is very disparate with two different views. He reviewed the initial intent of the system and that was not the department driving the behavior of the providers. He reviewed inflation costs and industry costs together with negotiated increases in the caps. He stated that the Department reacted to the industry rather than the industry reacting to the Department and the large percentage of providers under the cap are there because of artificial inflation of the caps, not because they have lowered costs below inflation during that same time. The Department does not believe that the incentive program is fair, and there is no indication that the reduction of cost is a direct reaction to the policy of paying incentives when the facility is under the cap.

**Senator Darrington** asked if he disagrees with **Keith Holloway's** analysis of why this incentive was implemented 20 years ago and how it is operated? **Mr. Tisdale** responded that he agrees the incentive was put there to incentivise efficiency, but the program was built around the efficiency that already existed when the system was designed.

**Senator Smyser** asked if we have been running an inefficient program for 20 years or since 2000? **Mr. Tisdale** responded that this reimbursement policy was implemented in 2000. **Senator Smyser** asked at what point did the Department begin to question the policy? **Mr. Tisdale** indicated in 2007 the Department began to look at this reimbursement, and reductions were made in 2009. **Senator Smyser** asked at what point was the industry brought in to discuss changes in policy? **Mr. Tisdale** indicated that was about two years ago.

**Vice Chairman Broadsword** asked if we increase the assessments but leave the cap in place would we realize the same savings to make budget? **Mr. Tisdale** indicated this is an effort to get there, but this is just part of the answer. **Vice Chairman Broadsword** asked him to look at the graphs presented by **Mr. Holloway** and give an opinion as to whether that will work for the time being and give the

Department and nursing home industry time to come back to the table and work over the summer to address the concerns of the cap being artificially inflated and improve the incentive program as a whole. **Mr. Tisdale** indicated he would be happy to do that, but would need time to review. **Vice Chairman Broadsword** asked if it harms the Department to take out the 55 percent language suggested by **Mr. Baugh**. **Mr. Tisdale** responded that it does not, and what would be implemented in rule would be wage based.

**Senator Bock** commented that it troubles him that we are making major policy decisions and it seems that there is more work that needs to be done and should not be done on the last day of the session, and he would be looking for the Department's willingness to negotiate and set this aside and go forward after the session end, and asked if that was doable? **Mr. Tisdale** responded that we are reacting to what we see as inefficient reimbursement methodology and the intent language given the Department. Therefore, we are going to be working on this because we know we will be taking money out of the system and if through the upper payment limit we can put money back in the system, we will diligently be working with the industry on how we put the money back in the system. That will take place within the next month. **Senator Bock** asked why this legislation needs action today if there will be further negotiations in the near future. **Mr. Tisdale** indicated the urgency is clearly budgetary. This is a part of the Department's charge from the Legislature to reduce budget. **Senator Bock** indicated he is not convinced this will save money in the next year. **Mr. Tisdale** responded that we will save money. This money will be taken out and then put back into the system through the use of provider assessments.

**Senator LeFavour** commented that the Legislature is giving the Department a fairly impossible task in some ways. She stated that \$47 million in general funds represents approximately \$200 million in funding that will be lost this year. She asked if alternatives like the Millennium Fund and Federal Medicaid Assistance Percentage(FMAP) funds could be looked at. **Chairman Lodge** indicated that is not a part of this bill. **Senator LeFavour** asked if we do have alternatives would it be possible to ask JFAC if the Committee might consider putting language in place that would make it so the Department did not have to make some of these cuts. **Chairman Lodge** responded that is a good point and she will ask **Amy Johnson**, from the Legislative Services Office, to speak to that question.

**Senator Coiner** asked if **Mr. Tisdale** could provide the growth in patients receiving these payments over the last three years? **Mr. Tisdale** indicated he does not have exact statistics, but it is probably in the nine to ten percent range. He indicated he could provide that information. **Senator Coiner** compared that information to the chart prepared by **Director Armstrong**.

**Vice Chairman Broadsword** commented that according to testimony the amendments to Section 1 have a \$940,000 impact, Section 2 has a \$1.1 million impact, and the pharmacy section has a \$1.4 million dollar impact to the general fund and asked if that is correct? **Mr. Tisdale** indicated that is correct.

**TESTIMONY:**

**Amy Johnson**, Budget and Policy Department, Legislative Services Office, indicated the last forecast from the budget office showed a \$47 million ongoing cut. With the passage of the Hospital Assessment Act, that reduced that figure by \$25 million, resulting in a \$22 million gap. The fiscal impact of this bill and other changes the Department has suggested for 2011 that are not in statute will reduce the gap to \$15 million. With reference to the Millennium funds, from the perspective of a budget analyst, there is an estimated \$23 million in one time funds that would be carried over from 2010 to 2011. She stated the question for the Legislature and the Department is whether they want to propose ongoing cuts to solve the budget problem or would you rather use funding sources like the Millennium Fund to solve that problem one time. She further stated that the budget JFAC set counts on FMAP not being included for the Fiscal Year 2011. When you look at what is coming up in one time costs in this budget, not counting on the ongoing changes that need to be made we are looking at anywhere from a \$27 million to a \$97 million one time pull in 2011, and if you don't have that in 2012, you are looking at a \$27 million pull in 2011 and \$140 million pull in 2012 with the Department making the cuts that are proposed.

**Senator Darrington** asked if her figures are before any factoring or any studying done of what we will have to do with regard to the federal Health Care Act affecting Medicaid between next Thursday and 2014? **Ms. Johnson** stated that is correct.

**Senator McGee** commented that the figures facing the Committee are frightening and the decisions are tough; we must either make these cuts or raise taxes.

**Senator Smyser** asked if it will make a difference if we wait one year for this decision? **Mr. Tisdale** responded, yes it would. He stated in the aggregate, it is about nine percent of the solution.

**Senator Smyser** indicated she is not in support of using Millennium funds this year, but she does not want to penalize those who are trying to streamline businesses. **Mr. Tisdale** stated he realizes the difficulty in taking money out of any of the facilities, but this industry is very fortunate to have a lot of room in their upper payment limit and he believes we will be able to replace all of these funds back into the system.

**Chairman Lodge** indicated this is not the only cuts the Department will be making and that they still need to go through and look for other ways to cut the budget. **Mr. Tisdale** advised that the Department will be looking at every facet of this program and every reimbursement methodology.

**TESTIMONY:**

**Paul Leary**, Director, Division of Medicaid, Department of Health and Welfare, stated that this is the beginning, not the end. He presented a letter from **Leslie Clement**, Administrator, Division of Medicaid, detailing the concerns of the Department (see Attachment 4). He stated the Department is committed to working with the industry through the Provider Assessment Act and put dollars back in the system without jeopardizing State dollars.

**Vice Chairman Broadsword** referred to the handout from the nursing home industry showing the loss if they lose incentive payment, and another handout showing how much they will fall back if the assessment is increased. She asked if the ones that will lose the most are the ones that will gain the most if the assessment is increased? **Mr. Leary** deferred that question to **Mr. Holloway**, who advised that the people who are impacted the most will barely be brought up to where they are now, while the ones having no cuts in incentives will receive provider assessments for a potential gain. **Vice Chairman Broadsword** asked if he has had discussions about the provider assessments? **Mr. Holloway** indicated he had been in contact with the Department regarding the provider tax issues since last year, but has not had a chance to discuss it on this particular issue.

**Senator LeFavour** asked if there will be a hearing on the other \$44 million in cuts, and how that works with temporary rules? **Mr. Leary** indicated that the Legislative intent language really directs the Department to look at all areas and promulgate temporary rules and changes will then come before the Germane Committee. **Senator LeFavour** asked how that information will come to the Committee members. **Chairman Lodge** indicated they would be distributed through the internet.

**MOTION:**

**Vice Chairman Broadsword** commented that if this were not the last day of the session she would reject this bill, but as one of the authors of the intent language, she moved, seconded by **Senator Hammond** that the Committee send H 708 to the floor with a do pass recommendation.

**SUBSTITUTE MOTION:**

**Senator Bock** made a substitute motion, seconded by **Senator LeFavour**, that the Committee send H 708 to the 14<sup>th</sup> order for amendment.

**Senator LeFavour** commented that perhaps in the next hour or two there could be discussion between the parties to see if there are a more optimal set of numbers. **Chairman Lodge** indicated that the parties did meet on Saturday morning for an hour and a half to try to resolve the issues.

**Senator Smyser** stated that she is in support of making the cuts and wants to support the Department, but does believe that it is not in the best interest just because it is the end of the session to penalize businesses for not bringing everyone to the table because

we as a State maybe did not do our job, and hopes the parties can work it out in the last hour.

**Vice Chairman Broadsword** stated that this should not stop here and she feels the Department needs to go back to the table with the providers and they need to work on the assessment and any other cost saving methods that are brought forward by the providers in the hopes of reaching agreement. She stated she also objects to the providers not being included in the discussion from the beginning.

**Senator Bock** indicated if the time spent on Saturday was eight hours he would be a lot more comfortable, and we need to make the right decision today.

**Chairman Lodge** indicated this is not her favorite way as a chairman to have the last hearing of the session go. She complimented the hard work of the Committee with the difficult issues undertaken this year. She added that people who do not feel that the United States of America and the State of Idaho are in financial difficulty, need to be watching the news. She stated the Department has good people who are trying to work through these issues and are faced with a \$47 million shortfall. She stated we all have to step up to the plate and providers have to be more aware and come up with cost saving ideas. The budget will not be any prettier next year and we must balance the budget.

**SUBSTITUTE  
MOTION VOTE:**

The substitute motion to send H 708 to the 14<sup>th</sup> Order **failed by voice vote.**

**MAIN MOTION  
VOTE:**

The motion to send H 708 to the floor with a do pass recommendation **carried by voice vote.**

**Chairman Lodge** asked the parties to get together to see what they can come up with to make next year easier.

**Vice Chairman Broadsword** asked the Department, should this bill pass, that they go back to the table and consider placing the 55 percent supplemental language back into the bill.

**ADJOURNMENT:**

**Chairman Lodge** thanked the Committee for their hard work over the year, and stated she hoped all members of the Committee would consider service on the Committee next year.

The meeting was adjourned at 9:38 a.m.

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Senator Patti Anne Lodge  
Chairman

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Joy Dombrowski  
Secretary

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Lois Bencken  
Assistant Secretary