

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, January 18, 2012

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Lodge, Vice Chairman Broadsword, Senators Darrington, Smyser, Heider, Vick, Bock, and Schmidt

ABSENT/ EXCUSED: Senator Nuxoll

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

MINUTES: **Chairman Lodge** called the meeting to order at 3:00 p.m. She welcomed guests and passed the gavel to **Vice Chairman Broadsword** to conduct rules review.

DOCKET NO. 16-0225-1101 **Relating to Fees Charged by the State Laboratory (Pending Fee). Dr. Chris Ball**, Chief, Bureau of Laboratories, Department of Health & Welfare (Department), advised that this rule streamlines and simplifies the fees for laboratory tests at the State Laboratory. Technical jargon has been eliminated, making the rule more understandable and more user friendly. Revisions also allow the Bureau greater flexibility to respond to public health concerns. He stated that as a result of consolidation and restructuring of methods, some of the fees have changed. In areas where multiple tests have been grouped together, the overall fee has increased. In other areas, efficiencies gained at the laboratory since its last biennial cost analysis have resulted in decreased direct costs per test. In these instances the fees have been lowered. **Dr. Ball** requested that the Committee approve **Docket No. 16-0225-1101**.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachment #1).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 these fees are based on a national standard or if the Laboratory does its own time and materials studies in setting fees. **Dr. Ball** responded that it is actually a combination of both, depending on the area of the lab. The environmental testing fees take into consideration what surrounding laboratories who offer similar services are charging. On the other hand, if you look at the clinical test offerings, those fees are based on the in house assessment of cost and materials.

Senator Schmidt asked what clients the Laboratory serves. **Dr. Ball** advised the laboratory has a wide variety of clients. In the area of environmental testing they deal with a lot of other state agencies as well as the seven public health districts. In the clinical section they work with the district health departments, clinical laboratories and hospital laboratories throughout the state. In the emergency preparedness section, they work with a variety of state and local first responders. **Senator Heider** asked the reason for some fees being triple the previous fee. **Dr. Ball** indicated in many instances a number of different tests were consolidated that previously would have been billed separately.

Chairman Lodge asked whether she would take well water to be tested to the health district first, and is there a recommended time between collection of water and testing. **Dr. Ball** indicated this depends on what you are having the well water tested for. In the most common scenario, they would recommend that they do a series of tests, depending on location, for example in southwest Idaho for a private well owner it is recommended that they test annually for both coliform and nitrates and have a baseline test for arsenic. With regards to timing, he indicated this depends on the test. With Coliform testing the sample needs to be collected within 30 hours because it is a test for live bacteria. Other tests have a longer hold time. **Chairman Lodge** asked if members of the Committee could tour the State Laboratory. **Dr. Ball** responded they would be delighted to have the members of the Committee tour the Laboratory and show them what the capabilities are. He advised that Idaho was one of the first three laboratories in the nation to detect cases that led to the recognition of a recent E-coli outbreak related to spinach.

Senator Smyser thanked **Dr. Ball** for recognizing a need and making changes to benefit the people served by the Laboratory.

MOTION: **Senator Schmidt** moved, seconded by **Senator Heider**, that the Committee approve **Docket No. 16-0225-1101**. The motion carried by **voice vote**.

DOCKET NO. 16-0313-1101 **Relating to Consumer Directed Services (Pending).** **Arthur Evans**, Bureau Chief, Developmental Disability Services, Division of Medicaid, Department of Health and Welfare, advised that these rule changes are being made to align the rules with H 260 passed by the 2011 Legislature. These changes specifically address budget notifications, budget appeal information, and the specific conditions necessary for a budget modification. This will enable the Department to respond to requests for individual developmental disabilities budget modifications only when health and safety issues are identified. **Mr. Evans** requested that the Committee approve **Docket No. 16-0313-1101**.

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 Heider** moved, seconded by **Senator Vick**, that the Committee approve **Docket No. 16-0313-1101**. The motion carried by **voice vote**.

DOCKET NO. 16-0501-1101 **Relating to Use and Disclosure of Department Records (Pending).** **Shirley Alexander**, Child Welfare Program Manager, Division of Family and Community Services, Department of Health and Welfare, advised the Department is updating these rules to meet federal requirements for the Child Abuse Prevention and Treatment Act. This will allow the Department to share information with law enforcement, without a court order, thereby assisting law enforcement in carrying out their responsibilities to protect children from abuse or neglect. This pending rule existed until 2004, but was inadvertently deleted when the Department tightened the language in its rules to comply with HIPAA requirements. **Ms. Alexander** requested that the Committee approve **Docket No. 16-0501-1101**.

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

Senator Schmidt asked why the phrase "or abandonment" is italicized in Section 08.13 of the legislation. **Ms. Alexander** deferred to **Ed Hawley**, State of Idaho, Department of Administration, Division of Administrative Rules, for an answer to the question. **Mr. Hawley** advised that italics indicates a change in the pending rule.

MOTION: **Senator Darrington** moved, seconded by **Chairman Lodge**, that the Committee approve **Docket No. 16-0501-1101**.

**DOCKET NO.
16-0417-1101**

Relating to Residential Habilitation Agencies (Pending). **Eric Brown**, Program Supervisor, State Licensing and Certification, Department of Health and Welfare, advised that the changes in this rule are designed to clarify the certification requirements for residential habilitation agency providers, the health and safety critical incident reporting requirements, and certification enforcement procedures. These changes implement changes adopted by the 2011 Legislature in H 260. He requested that the Committee approve **Docket No. 16-0417-1101**.

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

Senator Schmidt asked if the provisional certificate referred to on page 410 of this Docket can be renewed after an initial six month period for agencies who are working on compliance. **Mr. Brown** responded that the Department has not issued consecutive six month provisional certificates at this time. **Senator Schmidt** commented that the way this rule is written, it looks like the Department could do that. After consulting the rule, **Mr. Brown** advised **Senator Schmidt** is right and added that, if an agency is issued a provisional certificate, the Department would review it in six months. If they find the agency has achieved compliance a full certificate would be issued; if not, the Department would move to revoke that certificate.

TESTIMONY:

Michael Wilson, a social worker and Administrator for a privately owned residential habilitation agency, spoke **in opposition** to **Docket No. 16-0417-1101**. He stated his concern is with the language within the rule relating to the Department approved process of notification set forth in Section 404.04, and feels this process needs to be more clearly defined in the rule and in addition there is a lack of clarity as to the definition of critical incident. He stated that the Department has offered to work with the providers regarding reporting protocol, but feels if this rule is passed, the Department will have no motivation to continue working with the providers.

Vice Chairman Broadsword stated she understands the concern related to the notification process, but feels like this initial notification can be accomplished through email and followed up with appropriate documentation. She asked why an agency would be opposed to reporting a serious illness, accident, death, emergency medical care, hospitalization, adult protective services contact and investigation, or if the client is arrested. She commented that those things seem like common sense and something you would want the Department to know as soon as possible. **Mr. Wilson** stated they do not have a problem reporting a critical incident, but the electronic reporting form is four pages in length and the critical incident report user guide totals 27 pages in length. He added if every incident is reported it would overburden the providers and the Department.

Senator Heider noted that he appreciates Mr. Wilson's comments, but would like to hear from the Department that there really is a 24-page document that has to be filed on any of these incidents.

Vice Chairman Broadsword asked **Art Evans** to advise the Committee on how the Department responds to a critical incident report. **Mr. Evans** indicated that in an attempt to come up with some guidance for the agencies, his staff created a protocol. That protocol was too detailed and although he did send it to the providers for comment, he considers it a starting place and has no intention of making this a protocol for the agencies to follow until the Department and providers work together to reduce it to a report that is not taxing on the agencies but at the same time gives the Department information it needs. **Vice Chairman Broadsword** commented that this sounds like a commitment on the part of the Department to continue working with the providers to clarify and simplify the process so that it meets the department needs and the provider needs. **Mr. Evans** responded that is correct.

Senator Heider noted that both **Mr. Evans** and **Mr. Wilson** use the word "critical" while Section 404.04 uses the word "significant." He asked what the difference is. **Mr. Evans** indicated there is no difference; he uses the word critical because that is what is in the Department's reporting protocol at this time.

Senator Smyser asked **Mr. Wilson** if his concerns had been addressed. **Mr. Wilson** stated his only concern is based upon the need to clarify the Department's approved process and reduce it to writing. If the rule is approved as written and providers are expected to comply, it puts them in a difficult position. **Senator Smyser** asked **Mr. Evans** if he could clarify that for **Mr. Wilson**. **Mr. Evans** advised that the process is informal at this time and if the providers have concerns about whether something rises to the level of a critical incident, all they have to do is call and check with the Department; that the process is being developed as the Department works with the providers. **Senator Smyser** asked if **Mr. Evans** is indicating there will be a good faith effort on the part of the Department. **Mr. Evans** responded that is his position.

MOTION: **Senator Schmidt** moved, seconded by **Chairman Lodge**, that the Committee approve **Docket No. 16-0417-1101**. The motion carried by **voice vote**. **Vice Chairman Broadsword** thanked both the Department and the providers and stated she appreciated the commitment to work together. **Senator Heider** commented that he has the same sentiment and the legislative record now reflects that agreement to work together.

DOCKET NO. 16-0310-1005 **Relating to Medicaid Enhanced Plan Benefits (Pending)**. **Pat Guidry Martelle**, Program Manager, Office of Mental Health and Substance Abuse, Division of Medicaid, Department of Health & Welfare, stated that the primary purpose of these rules is to ensure that workers in psychosocial rehab (PSR) agencies who are unlicensed must obtain national certification in their primary field of service delivery consistent with the requirements established by the national association charged with establishing standards for this field of workers, The United States Psychosocial Rehabilitation Association, also referred to as USpra. This will promote improved quality, effectiveness and efficiency in the delivery of PSR services to participants. **Ms. Martelle** requested that the Committee adopt **Docket No. 16-0310-1005**.

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

TESTIMONY: **Greg Dickerson**, representing Mental Health Providers Association of Idaho, spoke **in support** of **Docket No. 16-0310-1005**. He expressed appreciation to the Department for its hard work in bringing these rules to the Legislature.

MOTION: **Senator Darrington** moved, seconded by **Senator Smyser**, that the Committee approve **Docket No. 16-0310-1005**. The motion carried by **voice vote**.

DOCKET NO. 16-0319-1101 **Relating to Certified Family Homes (Pending Fee)**. **Debby Ransom**, Licensing and Certification Bureau Chief, Department of Health and Welfare, stated that as required in H 260, these rule changes adopt fees to cover the costs of certification and recertification of certified family homes and provide enforcement action for nonpayment of the recertification fees. She outlined the fees associated with the certification process and indicated that at this time 98 percent of providers are complying with the certification and initial application fees. **Ms. Ransom** requested that the Committee approve **Docket No. 16-0319-1101**.

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

Senator Schmidt noted the wonderful compliance and asked how this will affect the pool of providers. **Ms. Ransom** indicated the Department does orientation and initial processing once a quarter. There are a number of providers wanting to come into the program and the Department is working very closely with those homes who are not able or are unwilling to pay the fees. This is about health and safety, not about closing homes.

Vice Chairman Broadsword drew upon her JFAC knowledge to respond to a question by **Senator Vick** related to the fiscal impact of this legislation. She advised that previously \$299,700 came from state general funds and \$299,700 came from federal funds. **Vice Chairman Broadsword** asked how many certified family home providers there currently are. **Ms. Ransom** advised that as of December 31, 2011 there were 2,161.

MOTION: **Senator Schmidt** moved, seconded by **Chairman Lodge**, that the Committee approve **Docket No. 16-0319-1101**. The motion carried by **voice vote**.

ADJOURN **Vice Chairman Broadsword** returned the gavel to **Chairman Lodge**, who thanked the presenters and the Committee and adjourned the meeting at 4:05 p.m.

Senator Lodge
Chairman

Lois Bencken
Secretary