

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 06, 2012

TIME: 3:00 P.M.

PLACE: Room WW54

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

**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.

MINUTES: **Chairman Lodge** called the meeting to order at 3:05 p.m.

RS 20771C1 **Relating to Regulation and Licensure of Massage Therapists. Senator Hammond** provided opening remarks regarding **RS 20771C1**, and introduced **Suzanne Budge**, presenting the RS on behalf of the American Massage Therapy Association, Idaho Chapter who, she indicated, are all volunteers. The purpose of this legislation is to provide a process for licensing massage therapists. Massage therapy has become an accepted part of conventional medicine to assist patients working to improve their health or recovering from an injury or medical procedure. Currently, anyone may advertise themselves as a massage therapist regardless of their level of training or lack thereof. Requiring a license of professional and trained massage therapists will insure that citizens seeking this form of therapy will receive appropriate care. Ms. Budge advised this bill is essentially a model bill, elements of which are largely used as part of the licensing process in 43 states, including Idaho's surrounding states with the sole exception of Wyoming. **Ms. Budge** requested that **RS 20771C1** be sent to print.

Senator Darrington asked if most of the massage therapy schools that supply the massage therapists active in Idaho are certified by some accrediting agency. **Ms. Budge** responded that she believes the answer is "yes." In looking at other states and speaking with practitioners, there is a very close working relationship with the colleges and private schools, and they are quite attentive to those credentialing issues.

Vice Chairman Broadsword commented that the Board of Occupational Licensing moved the compensation of several board members from one designation to another so that they would not be subject to PERSI and asked if this legislation is in keeping with what the Board of Occupational Licensing is doing for other boards. **Ms. Budge** replied that she did not know the answer to that; however, the Board of Occupational Licensing did do a "triple scrub-down" of this legislation. She promised to investigate the answer to the question and bring an answer back to the Committee.

MOTION: **Vice Chairman Broadsword** moved, seconded by **Senator Schmidt**, that **RS 20771C1** be sent to print. The motion carried by **voice vote**.

S 1255 **Relating to Records Exempt from Disclosure. Senator Corder** advised that under current law, information vital to the health and well being of children, even medical information, routinely is not shared, and in many cases may not be shared, from one foster parent to another or by other decision makers. He related experiences he has encountered with foster parents who have been placed in difficult situations when vital information does not follow the child.

Because of these concerns, **Senator Corder** requested the assistance of **Rob Luce**, Administrator, Division of Family and Community Services, Department of Health and Welfare (Department) in drafting this legislation which will allow the Department to better define, in rule, the information that will be disclosed and made available to foster parents, adoptive parents, guardians, and other legally responsible parties.

Senator Corder stated that the Department needs flexibility to deal with any situation in foster homes and this one simple addition to the statute will give the Department that flexibility. As conditions change the Department can adjust, by rule, those things that are necessary to protect the children in foster care. He pointed out that this will give the Department a lot of authority, but ultimately this Committee will review and approve or reject any rule presented by the Department. Should the Committee approve a rule that does not work, he noted that the Idaho Legislature has a unique right to review any rule at any time and reject it, and this process is much faster than changing statute.

Senator Darrington stated that he had no problem giving the Department rulemaking authority and commented that it would be almost impossible to put into statute what would be necessary to enact the intent of this proposal. He asked if there are any federal prohibitions with regard to how far we can go with rulemaking authority in the release of information, to whom, how much, and so forth. **Senator Corder** indicated he believes that federal HIPAA law has been pushed upon us and, out of fear on the side of the Department, has pushed it to protect things that perhaps weren't intended. He continued that one of the things that **Mr. Luce** and he discussed was their belief that this simple sentence in the proposed legislation will give the Department the ability to push back against those intrusions into states' rights issues.

Senator Darrington indicated his agreement with **Senator Corder's** remarks related to federal laws and noted it is his feeling that rules are frequently promulgated which are questionable with regard to the legislation passed by Congress. He stated the Department needs the flexibility that a rule will provide, and promised that the Department would draft something that is fair and balanced, on a "need to know basis" while pushing the envelope. All rules will go through the public comment process and have stakeholders involved before coming back to the Committee for consideration. **Mr. Luce** requested that **S 1255** be approved by the Committee.

Senator Corder introduced **Mr. Luce** who indicated it had been his intention to write a "book" of legislation to correct this situation in statute when he came across the phrase, "unless otherwise provided by agency rule," in the Public Records Act in Idaho Code. He indicated we are talking about weighing the rights of privacy versus a need to know, and there are a number of state statutes as well as federal statutes on what we can do and what we cannot do. He related experiences of the Department when they are unable to share vital information with partners such as the Ada County Prosecuting Attorney and frustrations of the Department when they are unable to pass along vital information.

Senator Nuxoll commented that it is the Committee's job to avoid as much potential abuse as possible and agreed that something needs to be done but feels this legislation is just removing a blanket public records exemption and giving it to the Department. She asked if the Department had looked into the practices of other states. **Mr. Luce** responded that they had looked at other states and there are multiple ways of handling this. Some states have pages of law and some are utilizing the rules process as he proposes here.

Senator Vick asked what process the Department would go through to change a rule while the Legislature is not in session and how they would adjust the rule for the next unexpected records request. **Mr. Luce** responded that if a question of health or safety is involved, the Department could utilize the temporary rule process when the Legislature is not in session but he does not believe they would do that because of the need for a strong balance between the right to privacy and "need to know." Putting together a draft rule and holding multiple meetings across the state, with various stakeholders to discuss the issues, will produce a rule that most would agree upon before coming back to the Committee to complete the rulemaking process next year. He advised It is very unlikely for the Department to want to draft a rule for a statute that is based upon one specific instance, rather they will look for a pattern in order to avoid a knee-jerk reaction.

Senator Schmidt asked if Ada county uses multi-disciplinary teams for investigation of child abuse. **Mr. Luce** replied that they do. **Senator Schmidt** asked why the process of setting up multi-disciplinary teams and making arrangements for sharing communications between agencies did not work in the instance he related with the Prosecuting Attorney's office. **Mr. Luce** advised that particular case was outside of the statutory authority of that rule.

Senator Smyser asked if there is another way, a middle ground, to accomplish the needed change without giving the Department full authority. **Mr. Luce** advised that the only way would be to substantially revise all code sections dealing with this issue. He stated that this is 100 percent a policy call by the Legislature on how we go down this road – whether by rule or by statute. The Legislature will have final approval in either instance.

Senator Bock commented that we do have a middle ground. Idaho is one of the few states in the country in which the Legislature is given the opportunity to review rules changes. He stated that, although he shares concern about giving over authority to the Department, the Committee will have a chance to debate those rules, which seems to be the middle ground. **Senator Darrington** expressed that Idaho may be the only state in the Union that has the right to reject rules by Resolution. This power was given by the Idaho Supreme Court. He stated that he is not troubled at all by giving the Department rulemaking authority; he believes the difficulty and sensitive nature of the issues involved will cause them to walk a fine line. **Senator Darrington** stated that he would hesitate to put this in statute as the rules are much more fluid than statute.

MOTION:

Vice Chairman Broadsword expressed her agreement with **Senators Bock** and **Darrington** and moved, seconded by **Senator Heider**, that **S 1255** be sent to the Floor with a do pass recommendation. The motion carried by **voice vote**, with **Senator Nuxoll** requesting that she be recorded as voting "nay."

Senator Schmidt commented that what has been going on has not been good care, and we cannot assume that good care will happen without careful oversight just because we are changing the law. That is the intent, and we must keep in mind the fact that we need to provide appropriate care for those people under our authority. **Senator Bock** added that we want people who are in the difficult position of needing care from the health and welfare system to have faith in the system. In the long term, we need to think of ways in which we can improve the system so that people who do report issues feel like something was actually done. **Senator Smyser** commented that, working in schools, she has run into the situation where the Department cannot give out information. She stated that there is a fine line with information being shared in regards to how that can affect families, but keeping the lines of communication open is vital.

RS 20761C1

Relating to Federal Food Stamps. Steve Bellomy, Department of Health and Welfare (Department), stated that the purpose of this bill is to reduce the felony threshold for trafficking food stamps so that it matches the federal threshold. The current statute makes it a felony to traffic food stamps for more than \$150 and a misdemeanor below that amount. The Office of Inspector General (OIG) for Health and Human Services requested that Idaho establish the threshold at \$100 so that it matches the Federal rules. This will allow the State's program integrity investigators to assist with these cases in order to charge individuals who traffic food stamps under Idaho law and Federal rules simultaneously. He also advised that a change in the title makes it clear that food stamps are also known as the Supplemental Nutrition Assistance Program (SNAP).

Mr. Bellomy provided some highlights about what the Department is doing to improve the integrity of SNAP. He indicated:

- The Department continues to maintain an extremely high accuracy rate and efforts continue to improve access to benefits while reducing costs and controlling abuse;
- The Department and its federal partners are working more cooperatively; and
- The Welfare Fraud Investigation Unit continues to improve both efficiency and effectiveness.

He requested that the committee send **RS 20761C1** 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).

Senator Heider asked how often people are caught misusing their SNAP benefits, resulting in a misdemeanor or felony and, in reducing the threshold to \$100, what is the benefit to citizens of Idaho and those in the food stamps program. **Mr. Bellomy** responded that the Department does not have an answer as to how often. They have not been highly successful in finding and prosecuting significant cases; however, they have had some success in identifying trafficking and were able to stop benefits to the recipient and provide enough information to close down a retailer. **Mr. Bellomy** continued the benefit would be in the removal of a barrier to the Federal government's ability to work with State and law enforcement partners sharing resources and expertise - to find, investigate, and prosecute these cases.

Chairman Lodge asked for clarification regarding **Mr. Bellomy's** reference to disabled electronic benefits for certain incarcerated recipients. **Mr. Bellomy** responded that, although not yet finalized, in a single member household where no other persons are authorized to use the benefits card, if the recipient has been incarcerated, the Department would deactivate the card, rather than terminate the benefits so that no one else can use the card while the person is incarcerated. He stated there are many of these situations where an individual was incarcerated and an unauthorized person was using the account, resulting in a program violation.

Senator Bock asked if the cards assisted the Department in reducing the level of fraud, or do they make it more difficult. **Mr. Bellomy** responded that he believed, although every method will bring its own set of problems and risks of manipulation, it does provide an electronic audit trail of what the transactions are and where they are occurring.

Senator Heider asked if it is simply the unauthorized use of the card in the store that is being addressed in Section 3 of the legislation. **Mr. Bellomy** replied that Section 3 refers to the ability of the retailer to redeem the benefits for cash.

MOTION:

Senator Darrington moved, seconded by **Senator Smyser**, that **RS 20761C1** be sent to print. The motion carried by **voice vote**.

RS 21030

Relating to the Medical Consent and Natural Death Act. Robert L. Aldridge, representing the Idaho End of Life Coalition, provided a historical background and explanation of changes proposed in **RS 21030**. In the course of updating the Medical Consent and Natural Death Act (originally two separate acts), a form called the "Physician Orders For Scope of Treatment", commonly called a "POST" was developed and language added to the Act to set the terms and conditions for the POST. This form was designed to reduce some of the problems that existed with "Do Not Resuscitate" (DNR) and "Do Not Intubate "(DNI) orders by doctors with a form that is much more flexible and portable, going with the person into all settings, and was binding on all treating personnel. Additionally, the form gave a number of more detailed options than either the Living Will and Durable Power of Attorney for Health Care or DNR and DNI orders would supply, thereby giving the person more control over their medical treatment.

The interaction between the POST and other medical directives, such as the Living Will and Durable Power of Attorney for Health Care, is clarified. Allowed signers of the POST are expanded to include Physician's Assistants (PA's) and Advance Practice Professional Nurses (APPN's). A new section is added to cover how a POST can be temporarily suspended. The new language gives clear methods for suspension and for resuming the POST after the suspension time has been completed. This bill, which has been worked on and reviewed extensively for several years, will greatly clarify the law on POST forms. It will also give a person executing a POST, or other medical directives, more certainty that their wishes will be followed. It will give medical personnel clarity on how the POST form works and their responsibilities under the POST. **Mr. Aldridge** requested that the Committee send **RS 21030** to print.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see Attachments #2-4).

MOTION: **Senator Smyser** moved, seconded by **Senator Heider**, that **RS 21030** be sent to print. The motion carried by **voice vote**.

MINUTES APPROVAL: **Senator Darrington** moved, seconded by **Senator Schmidt**, that the minutes of January 23, 2012 be approved. The motion carried by **voice vote**

PRESENTATION: **Responding to Community Needs Differently. Chairman Lodge** introduced **Lois Tupy**, Executive Director of Love INC (Love in the Name of Christ) of the Treasure Valley. **Ms. Tupy** reported that, aside from being Executive Director for Love INC, she has recently stepped aside from serving on the national directorship of Love INC and, as such, has seen and worked with people in need across the nation. This opportunity has given her the ability to bring both the local and national perspective. She stated that she has been involved with Love INC for 12 years and she wanted to present what is seen as she sits before people every day, face-to-face. Love INC's purpose and mission is to mobilize local churches to reach out to people in need through "developmental compassion" - coming along side people to help equip them so that they can improve their life. **Ms. Tupy** related she has worked with hundreds of churches and thousands of volunteers, and that Love INC is a great partner with community agencies working very closely with Health and Welfare and most other local agencies in the community. There are approximately 3,200 occasional volunteers - those not helping every week - and between 300-500 people who volunteer on a weekly basis.

One very common trend starting to bother not only **Ms. Tupy** but all the agencies they work with, is they are working with the same people in need constantly. In asking herself why and what is going on, her belief is that sometime during the

1960's the church began to release taking care of people in need to the government, and so the government put together the food stamps and other programs to try and address the situation. Addressing people in need became addressing their need and, as the person was ignored, they began to live in need. Soon churches opened food banks where people could come in to get food and go home, and repeat this scenario each week. **Ms. Tupy** believes this has had a terrible effect across our nation; what exists now, in her opinion, is people in need are imprisoned in their need situation.

Ms. Tupy highlighted the different training and mentoring options that Love INC offers to those in need. She featured the "New Hope Relational Program," which over the 12 years it has been available, has been tremendously successful. The 40-50 families that have been involved have paid off over \$2,300,000 worth of debt, 97% of their marriages have been saved, and 96% have increased or improved their employment. . Although the "New Hope Relational Program" does cost money to participate in, they also offer help and training in finances, cooking, shopping, nutrition, parenting, life skills, and job training - all offered for free and with mentorship and incentives. However, 90% of the people who come to Love INC for help do not participate in any of the training, especially those who are in generational poverty, because there is no motivation to do so. They are being taken care of, even if the lifestyle they live is less ideal.

Ms. Tupy asked why people in need shouldn't be required to attend a class before receiving food stamps or have their food stamps restricted so that they have to do something, even once a week, to receive them. She expressed her discouragement with HUD housing and other government housing projects that have set some requirements, but do not offer any training components that would enable participants to meet those requirements. She believes that until there is a required participation in programs that Love INC and other non-profit agencies offer, in order to receive the assistance benefits now given so freely, very few will take part in improving their lives.

Various members of the Committee asked about Love INC's cooperation with other faith-based organizations and its work with people who have disabilities. **Ms. Tupy** stated that they work with numerous churches in the Christian community and serve anyone who is in need, and that she believes other faith-based organizations who are not Christian also offer extremely good programs in the community. Among those in need, they work with the case managers of those with disabilities and developmentally impaired. Since Love INC's church volunteers may not be capable of teaching to that level, while Love INC does not have training classes available, they do provide for them. **Ms. Tupy** summarized that it is out of compassion her heart breaks for people who are being allowed to remain imprisoned in their need and her desire is to see them take the opportunities that are available for them to have a fuller life.

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 adjourned the meeting at 4:29 p.m.

Senator Lodge
Chairman

Lois Bencken
Secretary

Diana Page
Assistant Secretary