

MINUTES
HOUSE TRANSPORTATION & DEFENSE COMMITTEE

DATE: Tuesday, February 14, 2012

TIME: 1:30 P.M.

PLACE: Room EW40

MEMBERS: Chairman Palmer, Vice Chairman Ellsworth, Representative(s) Wood(35), Smith(24), Bedke, Wills, Hart, Nonini, Hagedorn, Bateman, Henderson, Nasset, Ringo, King, Killen

**ABSENT/
EXCUSED:** Representative Nonini

GUESTS: Tamara Mackenthun, Julie Weaver, Michael Berry, Division of Veterans Services (DVS); Charles Price, Sr., Mel Napier, American Legion; Chris Fisher, and Alan Frew, Idaho Transportation Department (ITD); Katherine Kirk, Idaho Heritage Trust

Chairman Palmer called the meeting to order at 1:34 P.M.

Representative Bateman made a motion to approve the minutes of February 8, 2012 with the following correction: **Rep. Killen** be included as absent/excused.
Motion carried by voice vote.

H 479: **Tamara Mackenthun**, Administrative Support Manager, Division of Veterans Services (DVS), presented **H 479**. Ms. Mackenthun went over the process for determining and declaring that residents of the veterans home need a Representative Payee (for Social Security Benefits) or Fiduciary for Veterans Administration (VA) Benefits appointed on their behalf: For VA benefits: The state Veterans Services Officer at the Veterans Home sends the VA Regional Office a letter requesting appointment of VA Fiduciary for a specific resident, a statement of medical opinion from residents' primary physician to VA Regional Office, and a recommendation as to who should be appointed as Fiduciary. The VA sends the resident notification that the VA is considering rating the resident as not able to make financial decisions; if the resident disagrees with the VA's decision the resident has 60 days to respond with additional evidence, to request a hearing, or to both provide more evidence and request a hearing. If the VA determines a Fiduciary needs to be appointed the resident's file is sent to the VA Fiduciary Office in Salt Lake City. The local VA investigator meets with the resident and the proposed Fiduciary and provides on-site information to the VA Fiduciary Office, which then makes the final appointment determination.

The Division of Veterans Services (DVS) has not yet drafted rules for an internal appeal process. The Division would like to bring advocates from such groups as the ombudsman program, the Idaho Commission on Aging and Legal Aid to discuss the options and to provide their input regarding a process that is best for the resident. The Division anticipates the internal appeal process will be similar to the appeal program in place elsewhere within the Division, which is: (1) an individual disagreeing with a determination submits an appeal to the Division Administrator; (2) the administrator can appoint a single hearing officer or designate the Veterans Affairs Commission to act as a hearing officer; (3) the hearing officer informally receives evidence and can conduct a meeting-like hearing to take testimony; (4) The hearing officer makes a decision which is then affirmed or rejected by the Division Administrator; and (5) the appealing party can appeal the Division Administrator's decision to a district court under the Administrative Procedure Act.

The processes for ensuring proper handling, safeguarding and audits of residents' funds are as follows: Social Security Administration (SSA) requires an annual

accounting, a Representative Payee Report, which includes questions such as: did the payee determine how funds were spent; did payee charge for services provided; how much was spent on food and housing; how much was spent on personal items, and how much was saved. The VA conducts periodic random reviews of fiduciary accounts to ensure proper handling of resident funds. Veterans homes reconcile resident trust accounts monthly and they provide the friend or family member(s) selected by the resident to receive the information with a quarterly Resident Trust Account statement. Veterans homes must provide residents with a trust account ledger any time they request one. Trust account transactions are audited regularly by the Idaho Division of Veterans Services staff, VA Surveyors, State Licensing and Certification Surveyors, State LSO Auditors and an independent auditing agency.

The committee asked what happens if the resident already has a court appointed conservator. **Ms. Mackenthun** said in that case DVS would not need to appoint a payee, unless that representative was not acting in the best interest of the veteran. If that was the case, DVS would go back to the court and go through the process and ask for that conservator to be terminated.

The committee expressed concern about too few checks and controls and asked about the liability of the administrator. **Ms. Mackenthun** said in a private home the administrators are protected without invoking their own liability, but the DVS administrator has the same liability as any state employee. If there were misappropriations, the individual would be prosecuted by the state. The committee asked if the resident is at any point given a choice about having a representative payee appointed for them. **Ms. Mackenthun** said that determination would be made by a physician, but only when the person seems incapable. Social Security Income (SSI) processes and legal processes in all cases have many kinds of protection to make sure the person is incapable of acting for himself/herself. The committee members indicated they would be more comfortable with this type of procedure handled through the court system. **Ms. Mackenthun** deferred the concern to **Michael Berry**, DVS Business Manager, who said DVS follows the advise of their legal council by taking advantage of the same processes and payees of Social Security. **Ms. Mackenthun** said this is not a process DVS wants to handle. There are very isolated cases when a family is taking advantage of that veteran. DVS is not asking to be their guardian (for medical needs) or their conservator. In answer to what back-up DVS has in place, **Ms. Mackenthun** said DVS has a wide variety of social workers, state ombudsman, and the people from the Commission on Aging. **Ms. Mackenthun** said there is a tremendous amount of paperwork for a veteran when they apply to live at our home; they are enrolled in the medical system, they give full financial disclosure to determine if Medicare or Medicaid is involved. This is audited by the State and Veterans Administration.

Charles Brice, American Legion, testified in support of **H 479**, standing in favor of this legislation because many of our veterans, as well as their family members, can't make decisions for the veteran. **Mel Napier**, American Legion, also testified in support of **H 479**, saying this bill will allow for an administrator to act as a payee when a resident is experiencing financial abuse.

MOTION:

Rep Hagedorn made a motion to **HOLD H 479** to a time certain and bring in legal council. Upon learning council was present, Rep. Hagedorn withdrew the motion.

Julie Weaver, Deputy Attorney for DVS, said when there are no appointed fiduciaries the VA and SSI have a process for appointing a payee. Regarding adjudication by a court, **Ms. Weaver** said in the private sector fiduciaries are appointed all the time, but that process takes too long and so DVS does not involve the courts. **Ms. Weaver** stated this process was not patterned after another state.

MOTION: **Representative Killen** make a motion to send **H 479** to General Orders. **Rep. Ringo** seconded the motion. **Motion carried by voice vote.** **Representative Bolz** will sponsor the bill on the floor.

S 1243: **Representative Ellsworth** asked for unanimous consent to reconsider **S 1243**. There were no objections. Rep. Ellsworth explained that this bill assures accountability of entities who receive funds from the license plate programs. Potential amendments were discussed. **Representative Hagedorn** asked the committee to give ITD have an opportunity to weigh-in on the amendment, before it is sent to General Orders.

Alan Frew, ITD, stated that he believes accountability for the license plate funds is important, and he requested 24 hours to look it over and offer suggestions.

MOTION **Rep. Ellsworth** made a motion to send **S 1243** to General Orders. **Rep. Wood (35)** seconded that motion. **Motion passed by voice vote.** **Rep. Hart** asked to be recorded as voting **NAY**. **Rep. Ellsworth** will sponsor the bill on the floor.

ADJOURN: There being no further business to come before the committee, the meeting was adjourned at 2:37 P.M.

Representative Palmer
Chair

Jane Clark
Secretary