

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Wednesday, January 15, 2014

**TIME:** 3:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Nuxoll, Senators Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt

**ABSENT/ EXCUSED:** Senator Lodge

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

**CONVENED:** **Chairman Heider** called the meeting to order at 3:01 p.m. and welcomed the audience. He announced that Senator Lodge was excused from attending the meeting, and that Senator Hagedorn would be leaving shortly to attend a veterans meeting and then he may return.

**PASSED THE GAVEL:** Chairman Heider passed the gavel to Vice Chairman Nuxoll to introduce the first speaker for the pending rules.

**DOCKET NO. 16-0202-1301** **Rules relating to the Emergency Medical Services (EMS) Physician Commission - Revisions to Standard Manual (Pending): Dr. Curtis Sandy**, Chairman of Idaho's EMS Physician Commission, stated that the Idaho EMS Physician Commission was formed with the passage of H 8585 in the 2006 Legislature. The commission is composed of eleven voting members that are appointed by the Governor. The membership of this commission draws from a variety of EMS stakeholder groups, as well as geographic and urban rural representation. The purpose of the Physician Commission is to establish standards for the scope of practice and medical supervision for licensed EMS personnel and organizations. He stated that the Physician Commission Standards Manual describes the skills, treatments and procedures that licensed EMS personnel may perform. During quarterly meetings, the Physician Commission refines the standards manual to reflect current best practices in EMS. He informed the Committee that one change in the EMS Physician Commission Standards Manual was to change 2013-1 to 2014-1. Medical director qualifications for an air medical emergency were added.

**Dr. Sandy** furthered that language regarding optional module equipment and reporting was added and changed. He mentioned that the remaining changes were housekeeping changes.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).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 Nuxoll** commented that there were questions last year concerning the Emergency Medical Technicians (EMTs) that were involved with the ski patrols. **Dr. Sandy** replied that, in accordance with the EMS rule, there was discussion regarding the exemption that took place for the ski patrol. The majority of ski patrollers are not EMTs. They complete a course called the "Emergency Outdoor Care Course" and are not under the purview of EMT licensure oversight.

**Vice Chairman Nuxoll** asked what is an EMS physician. **Dr. Sandy** explained that an EMS physician is a medical doctor who truly specializes in the practice of EMS. He informed the Committee that he was just informed that he was one of the first 2,000 in the nation to be board-certified in the sub-specialty of emergency medical services. It is the first time that EMS has been recognized at a physician level as a sub-specialty. He furthered that now a person can specialize in emergency medical services.

**Vice Chairman Nuxoll** then inquired if there had been any opposition to the standards manual, and **Dr. Sandy** responded that there has been no negative feedback.

**Senator Schmidt** asked that since the EMS medical director for an air medical agency must have training and experience in emergency medicine, how many air medical agencies are there in this state, do they currently have that training, and how difficult is it to get that training. **Dr. Sandy** responded that there are five air ambulance agencies that are licensed in the state of Idaho, and each are nationally accredited under the national standard. He informed the Committee that he is one of the air medical directors for the air medical agency, and has had specific training in that. The training lasts six to eight hours.

**Senator Martin** inquired where does a person get training on flight physiology and air medical research management. **Dr. Sandy** replied that training could come from a variety of sources, such as the flight agency itself. The National Air Medical Physician association offers that training. There is also online training resources.

**MOTION:**

**Senator Martin** moved, seconded by **Senator Schmidt**, to adopt **Docket No. 16-0202-1301**. The motion carried by **voice vote**.

**Senator Lakey** thanked Dr. Sandy for his summary.

**DOCKET NO.  
16-0315-1301**

**Rules relating to the Standards Governing Semi-Independent Group Residential Facilities for the Developmentally Disabled or Mentally Ill (Chapter Repeal) (Pending): Tamara Prisock**, Administrator for the Division of Licensing for the Department of Health and Welfare, informed the Committee that the docket she is presenting proposes to repeal the entire rule chapter. The chapter outlines rules and minimum standards for semi-independent group residential facilities for the developmentally disabled or mentally ill and has become obsolete. Several years ago, the Department discontinued certifying and surveying these facilities because they no longer provided services for the developmentally disabled. Although the facilities provide housing and some services to the mentally ill and chronically homeless, they are private residential facilities, and not health facilities. They provide no Medicaid-reimbursable services, and the Department has no statutory authority or responsibility to license or certify this type of facility. These facilities receive their funding through private pay and donations. With the Department's resources being limited, the decision was made to discontinue certifying these facilities. Although surveys for these facilities ended several years ago, work was not completed to repeal this rule chapter. Currently, there are six facilities of this type still operating in Idaho - four in Coeur d'Alene, one in Moscow, and one in Twin Falls. Last January, each facility received written notification that this rule chapter related to their facility type would be discontinued. No responses or 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 2).

**Senator Martin** commented that he had a relative in one of the facilities, and asked what the change would be. **Ms. Prisock** replied that for those residents presently in this facility, there has been no interaction with the Department for a number of years. Some facilities that were providing health care became assisted living facilities and are licensed under a different rule chapter. The changes that the Department has made in its array of mental health treatment services caused some evolution. These six facilities have no Medicaid reimbursable services. The need for the Department to provide oversight to these facilities is no longer there.

**MOTION:**

**Senator Guthrie** moved, seconded by **Senator Lakey**, that the Committee adopt **Docket No. 16-0315-1301**. The motion carried by **voice vote**.

**DOCKET NO.  
16-0601-1301**

**Rules relating to Child and Family Services - Foster Parent Payment Increase (Pending): Erika Wainaina**, Idaho foster care Program Specialist, informed the Committee that this docket makes permanent an increase of foster care reimbursement rates that was directed by the Legislature last year in the Department's appropriations bill. Following the Legislature's direction, a temporary rule was written and the increased rates went into effect July 1, 2013. She stated that she was here today to request that this pending rule and the increased rates be adopted as permanent. The changes in base rates are:

Ages 0-5: \$329 per month per child from \$301;  
Ages 6-12: \$366 per month per child from \$339; and  
Ages 13 and older: \$487 per month per child from \$453.

She informed the Committee that foster parents have a difficult job caring for Idaho's foster children. Idaho has one of the lowest spending rates per foster child in the entire country. The increase in rates will enable foster families to better care for Idaho children who enter the child welfare system.

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

**Senator Bock** asked if the rates are provided for by statute. **Ms. Wainaina** confirmed that it has been written into the statute.

**Senator Martin** asked for some historical perspective over the last five years as to what the rate has been. **Ms. Wainaina** replied that this is the second increase since 2012.

**Senator Guthrie** inquired if more affluent families could opt out, and **Ms. Wainaina** replied that the rate is meant to cover room and board and is a small amount. She was not aware of anyone requesting to opt out.

**MOTION:**

**Senator Bock** moved, seconded by **Senator Martin**, to adopt **Docket No. 16-0601-1301**. The motion was carried by **voice vote**.

**DOCKET NO.  
16-0717-1301**

**Rules relating to Criminal Background Checks - Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs (Pending): Rosie Andueza**, Program Manager with the Division of Behavioral Health (Department), stated the proposed rule change in this docket addresses the current criminal background check process for Alcohol and Substance Use Services (SUD) and offers an administrative review on a case-by-case basis for those individuals who do not pass a criminal background check. Currently, if an individual fails the Department's criminal background check, they are ineligible to provide direct client services to substance use consumers. The rule is unwavering, and does not allow for any review of individual circumstances or the individual's change in lifestyle and behavior since committing the crime. In order to improve the delivery of substance use treatment in Idaho, it is essential that the current rule be modified. Recovery is the ultimate goal of any substance use disorder

treatment program. Fundamental to the philosophy of recovery is the belief that people can and do make the permanent changes in their lives required to live a clean and sober lifestyle. People in recovery commonly choose to give back and seek professions in the area of substance abuse treatment. These individuals serve as great peer role models for people new to the recovery process as they frequently have shared life experiences. The new recoveree may relate to and connect better with a person with a long-term recovery experience, rather than with any other person in their treatment.

**Ms. Andueza** continued that prior to recovery, some individuals under the influence committed crimes that they normally would not have committed because of their impaired judgment. Frequently, these crimes were committed to support their habit, resulting in criminal charges that will stay with them for a lifetime. These individuals in long-term recovery are unable to work as treatment providers or recovery coaches because the criminal charges they obtained prior to finding a life of sobriety prohibit them from passing the criminal background check. The current rules have a negative impact on a recovery oriented system of care that frequently relies on these individuals in recovery to serve as peer specialists or recovery coaches for those who are in the early stages of recovery. **Ms. Andueza** gave an example of connecting someone in drug court with someone who has successfully completed drug court and is living a productive, sober lifestyle. A mentor with real-life experience can offer guidance and hope. Many of these individuals have had legal issues that they have successfully put behind them, yet they are unable to give back to the recovery system because of their past criminal status. And, arguably more importantly, the entire recovery oriented system of care is robbed of having individuals in that system who can effectively work with others and help guide them toward a life of sobriety. The proposed rule allows for individuals negatively impacted by today's criminal history rules to apply for a waiver. Each waiver will undergo an administrative review conducted by the Department of Health and Welfare. Factors to be deliberated when considering a waiver include such things as: the severity or nature of the crime, period of time since the crime occurred, and circumstances surrounding the incident. Certain crimes, including crimes of a sexual nature, violent crimes, crimes against children and felonies punishable by death or life imprisonment, are not eligible for the waiver process. The proposed rule also clarifies the employer's responsibility in making a determination regarding the ability or risk of the individual to provide direct care services upon offering employment.

**Ms. Andueza** concluded by stating that during the negotiated rule making process, many treatment providers supported this rule change, as the current rule has a negative impact on their workforce and their ability to provide improved services.

**Chairman Heider** asked about the employer's responsibility, and how this waiver will produce a positive outcome. **Ms. Andueza** replied that just as any employer is responsible for their employee's behavior, it is the same in this circumstance, and this clause reflects that. **Chairman Heider** then asked if the Department is held harmless if anything happens. **Ms. Andueza** responded that the purpose of this rule is to address circumstances in which potential employees cannot work in this field because of a crime they may have committed 20 years ago. This will allow the Department to look at each individual situation. We have situations, for example, where people have lived a clean and sober life for 15 years after committing a felony 18 years ago. That felony follows them everywhere they go and they are unable to work in this field. This waiver allows us to look at each individual and their circumstance, and will permit us to override the criminal history background check to give them a chance to work in this field. In terms of the employer responsibility, it would be no different than any other employee they would hire.

**Senator Schmidt** inquired about the revocation of a waiver and asked if the Department's attorneys approved the language. **Ms. Andueza** advised that the Attorney General's Office looked at this proposal and approved it.

**Senator Lakey** asked if a licensure from the Department of Health and Welfare was needed- would a person need that in order to work for a particular employer. **Ms. Andueza** informed the Committee that for individuals employed and receiving funding, they must pass the criminal background check. So this is saying that if the person did not pass the background check, we are allowing them to work in this field with vulnerable individuals. **Senator Lakey** then asked if this is for someone who is working for a private employer that has been approved to work in this field, and **Ms. Andueza** confirmed that was correct. **Senator Lakey** inquired if the potential employer would have access to a copy of the criminal background check and be aware of what was in it, despite the waiver. **Ms. Andueza** referred to Fernando Castro from the Criminal History Unit, who could answer more thoroughly.

**Fernando Castro**, Program Supervisor for the Department's Criminal History Unit, approached the podium and stated that every applicant and their employer have access to and can obtain a copy of the criminal history report.

**Chairman Heider** asked for clarification on the liability issue should an individual of this nature be hired and then commit a crime while under the employment of the Department.

**Mr. Castro** advised the Committee that it was established in statute that the ultimate responsibility to make the fitness decision was going to be placed upon the employer. Once hired, the Department does not cast a net to monitor the employee's conduct. The Department is statutorily responsible for persons chosen to be their employees, and the employers then assume responsibility for any misdeeds that occur while that person is under employment.

**Vice Chairman Nuxoll** asked if the Department of Health and Welfare is responsible, and **Mr. Castro** reiterated that the Department is not responsible, but that the employer is responsible.

**Ms. Andueza** returned to the podium and stated that employers must make sure the criminal background check is completed on potential employees. The employee may say that they did not pass the criminal background check, but that they had a waiver. She further advised that public hearings were conducted on this matter and full support was received.

**Senator Bock** asked Mr. Fernando if the Department of Health and Welfare is who requests that the background check be made. And when the background check is requested, who does it, the Federal Bureau of Investigation (FBI), or who? **Mr. Fernando** replied that the Department does not initiate the request for the background check, but rather the applicant declares their criminal history and then the background check is done with their consent. The criminal part of the background check is done through the FBI. The Department submits 10 fingerprints to the FBI to conduct a nationwide criminal search on that applicant. The other items on the background check (such as the Child Protection Registry, among others) are done by Department staff.

**Senator Bock** then asked if the information that is used in order to deny or grant an application comes from third parties. **Mr. Fernando** confirmed that was the case. **Senator Bock** commented that if the Department does something negligibly on the background check and, for the sake of argument, missed a serious sex crime, they will be held responsible. Changes being made to the rule will not absolve the Department of that responsibility.

**Senator Lakey** then asked in the instance where a problem comes to light regarding the applicant during the review process and the Department grants a waiver, is the employer notified that there was a problem and that a waiver was granted, or will the employer only know that the applicant passed the background check.

**Ms. Andueza** responded that upon securing employment, the treatment provider would ask the applicant if they passed their criminal background check, and if the answer is no, the applicant will say at that point that they received a waiver. That is a requirement of the provider in order to maintain their licensure.

**Senator Lakey** commented that there was a difference between passing a background check, failing it and receiving a waiver, and passing it because of the waiver. His concern, he furthered, was that the employer was aware that there was a waiver granted. **Ms. Andueza** reassured Senator Lakey that the employer will know.

**Senator Martin** asked that if he were to hypothetically hire someone as an employer, will he know that the applicant had done something, say 20 years ago, and would he have access to that information. **Ms. Andueza** replied that he would have access to the criminal history.

**Senator Guthrie** asked if the employer's responsibility paragraph were absent from the proposed rule change, where would the responsibility lie. **Ms. Andueza** replied that since the Department does not currently have a waiver option in place, it is a pass-or-fail scenario. If a person passed, then they could be hired, whereas if they failed, they would not be hired.

**Senator Lakey** asked for clarification that the employer would be notified of the criminal history, and **Ms. Andueza** stated that when the Department does their facility approvals and renewals of facility approvals, one thing that is checked is all the records on the staff, and if they meet the clinical requirements, credentials and criminal background checks. Since the facilities know that they must produce that record during an audit, they are going to ask the person they hire for their criminal background check. The employer is responsible for ensuring that everyone who works for them has a criminal background check, and will be asking for documentation from the hiree.

**Senator Lakey** asked if an employer has to check a potential hiree's criminal background check before they can hire. **Mr. Castro** responded that since this is a paperless process, a web site is available that gives access to the employee's background check results, and the employer is required by the Criminal History Unit Rule to go to that web site and look at the results and make a decision on hiring.

**MOTION:**

**Senator Bock** moved, seconded by **Senator Heider**, to adopt **Docket No. 16-0717-1301**. The motion carried by **voice vote**. **Senator Lakey** voted nay.

**Vice Chairman Nuxoll** commended the Department for designing a way to give a person a second chance in life.

**DOCKET NO.  
16-0720-1301**

**Rules relating to Criminal Background Checks - Alcohol and Substance Use Disorders Treatment and Recovery Support Services Facilities and Programs (Pending):** **Rosie Andueza** informed the Committee that the language in the rule changes are exactly the same as **Docket No. 16-0717-1301**.

**MOTION:**

**Senator Martin** moved, seconded by **Senator Heider**, to adopt **Docket No. 16-0720-1301**. The motion was carried by **voice vote**. **Senator Lakey** voted nay.

**Vice Chairman Nuxoll** said that there was time for one more pending rule before the scheduled presentation, and that Casey Moyer of the Department of Health and Welfare would need to return another time to talk to the Committee about his pending rule.

**DOCKET NO.  
16-0733-1301**

**Rules relating to Criminal Background Checks - Adult Mental Health Services (Pending): Treena Clark**, Program Specialist for the Department of Health and Welfare, stated that the Committee just heard Ms. Andueza present on proposed rule changes to the criminal history background check requirements for Substance Use Disorder treatment and recovery support service providers. The docket Ms. Clark is presenting today proposes to make those same changes to the criminal history background check requirements in Adult Mental Health Services. Chapter 16.07.33 defines the scope of voluntary adult mental health services administered under the Department's Division of Behavioral Health. The pending rule in **Docket No. 16-0733-1301** allows for individuals working with clients accessing adult mental health services through the Department to apply for a waiver using the same process described by Ms. Andueza. The purpose of the proposed rule change is to remove the barrier to employing individuals as peer specialists to provide services to adults accessing mental health services through the Department.

**Senator Hagedorn** commented that there are a number of veterans who are returning home after enduring things they did not choose to see, and they sometimes suffer from post traumatic stress syndrome, among other things. When they transition themselves, sometimes they get into trouble. He furthered that there has been much success in getting those veterans out of trouble. Those veterans, in return, help other veterans that are coming home. We have veterans who are graduating with degrees in social work that want to come back and help returning veterans. This waiver process allows them to do that, and **Senator Lakey** voiced his appreciation.

**MOTION:** **Senator Hagedorn** moved, seconded by **Senator Martin**, to adopt **Docket No. 16-0733-1301**. The motion was carried by **voice vote**; **Senator Lakey** voted nay.

**PASSED THE GAVEL:** Vice Chairman Nuxoll passed the gavel back to Chairman Heider.

**PRESENTATION:** **Kendra Witt-Doyle**, PhD, MPH, Blue Cross Foundation Manager, presented a PowerPoint presentation entitled "High Five Children's Health Collaborative" to the Committee regarding childhood obesity. The Blue Cross of Idaho recently launched the High Five initiative to address childhood obesity. Obesity is a serious health problem that is greatly impacting the U.S. One hundred ninety billion dollars are spent annually in health care related to obesity; 27 percent of 18-24 year old people are too overweight to enlist in the military; and this generation of children is projected to have shorter life expectancies than their parents. Obesity now rivals tobacco use as the leading cause of morbidity and mortality. In 1985 in Idaho, less than 10 percent of the adult population was obese, which jumped to 25 to 30 percent of Idaho adults who were obese in 2011. In Idaho, one out of three children are obese. She advised the committee that High Five was developed to teach children healthier habits that will follow them into adulthood.

**Ms. Witt-Doyle** continued that there are five proven strategies to fight childhood obesity:

- Improved access to healthy and affordable foods;
- Increased physical activity;
- Healthier schools and childhood facilities;
- Education to help parents make healthier choices; and
- Promotion of public policies that fight the causes of obesity.

She informed the Committee that policy-makers, elected officials and opinion leaders are all discussing childhood obesity and solutions. Communities are bringing awareness and support for solutions; health care is coordinating, supporting and facilitating joint action; individual families are receiving education and instilling personal responsibility; and partnerships are attracting investments from foundations in and outside of Idaho, corporate involvement and sponsorships, public/private partnerships and government resources.

**Ms. Witt-Doyle** informed the Committee that 13 cities initially applied for the grant, and 4 cities were awarded, totaling \$750,000: Nampa, Kuna, Middleton and Lapwai. Three cities were awarded an Ambassador Grant of \$30,000 over the next 2 years to help them expand: Pocatello, Moscow and Meridian. The "Daily Do" is a fun program, and sends parents a daily email, which contains healthy recipes, nutrition tips, physical activity tips and events. They can text "High5" on their phone or sign up for email to receive the tips.

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 Nuxoll** asked where the funding comes from for this program.

**Ms. Witt-Dolye** replied that the funding is coming from the Blue Cross of Idaho Foundation at this time.

**Vice Chairman Nuxoll** was interested to know what High Five would be doing in Lapwai. **Ms. Witt-Doyle** informed the Committee that a decision in the action planning will take place February 4th and 5th. There are key themes that are occurring throughout the cities, such as how to get children who are spending too much time indoors to be physically active outdoors. In Lapwai, there is a plan to build a new playground.

**Senator Martin** asked for the definition of obesity. **Ms. Witt-Doyle** responded that for adults, it is having a Body Mass Index (BMI) over 30, and for children, it is being in the 95th percentile. Children and adults are measured differently: children are on the percentile curve compared to other children, and for adults, it is a ratio of height to weight. According to Idaho physicians, there are a number of children that are now in the 99th percentile or off the chart altogether.

**Vice Chairman Nuxoll** asked if High Five worked on an education program regarding diet. **Ms. Witt-Doyle** responded that there is one program that has had great success, which is the Idaho Food Bank's Cooking Matters program. It teaches individuals how to cook and shop on a budget. It shows how to incorporate fruits, vegetables and lean protein into a limited budget. It also gives parents the skills and resources to help make decisions for their family.

**Chairman Heider** thanked Kendra Witt-Doyle for her informative presentation. He then reminded the Committee that there will not be a meeting tomorrow because of Senator Lodge's meeting, and that the next meeting will be on Monday.

**ADJOURNED:** There being no further business at this time, **Chairman Heider** adjourned the meeting at 4:22 p.m.

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Senator Heider  
Chair

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Linda Hamlet  
Secretary