

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, February 04, 2014

TIME: 3:00 P.M.

PLACE: Room WW54

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

**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 Heider** called the meeting to order at 3:03 p.m., and asked the Committee Secretary to take a silent Roll Call.

S 1224 **Relating to Behavioral Health Services: Ross Edmunds**, Administrator for the Division of Behavioral Health at the Department of Health and Welfare, stated that **S 1224** has been sent to the Amending Order, and he stood for any questions the Committee may have.

Senator Lakey stated that one of the concerns was the definition of behavioral health, and after speaking with Mr. Edmunds earlier, it had been determined that the definition for behavioral health could be eliminated.

Mr. Edmunds replied that the bill adequately described the definition of behavioral health, which is a combination of mental health and substance abuse disorders. He offered to work with Senator Lakey on the definition if he so desired.

Senator Lakey informed the Chairman that he thought he could work with Mr. Edmunds on any changes in the Amending Order, and he had no further questions.

Senator Hagedorn asked if redefining behavioral health would impact the balance of the bill where the words, for example, "regional mental" were changed to "regional behavioral" health services.

Chairman Heider explained that mental health would be changed to behavioral health. The definition is where the problem lies.

Senator Hagedorn then asked if the definition of behavioral health is going to be changed to something other than what it currently is.

Senator Lakey responded that the bill provides that definition. The intent was to remove that definition.

Senator Hagedorn asked that since the term behavioral health would be used throughout the bill, where will the definition be located.

Mr. Edmunds replied that the best solution would be to work with Senator Lakey to find a solution to that. He thought a modification of the term in general terms would be appropriate, to have it mean mental health and substance abuse.

Senator Bock stated that behavior is something that is observed externally, whereas mental health is different, and suggests internal states of mind that are not observable. He wished to know where the change in terminology is coming from.

Mr. Edmunds replied that the term "behavioral health" is the current term used by the industry to describe a combination of mental health and substance abuse care. Behavioral health services would be the combination of mental health and substance abuse disorder services. Federally, it is known as behavioral health.

Senator Bock asked if behavioral health is terminology that has been adopted by the Diagnostic and Statistical Manual of Mental Disorders (DSM) as a standard term, or is this a more generic term that has been used outside of formal descriptions.

Mr. Edmunds replied that he believed the answer was both.

Vice Chairman Nuxoll asked what was the reasoning for combining them into one.

Mr. Edmunds responded that the purpose of combining mental health and substance abuse disorders is because that is practice. Efforts over the past decade have resulted in the integration of mental health and substance abuse into a single delivery system as opposed to two systems. It is a nationally recognized term.

RS 22460C1

Relating to Nurses: Roger Gabel, the Board of Nursing's General Counsel, informed the Committee that Sandy Evans, Board of Nursing Executive Director, is out of town on a previous commitment and is unable to appear before the Committee this afternoon. Ms. Evans requested his assistance in presenting this RS. The Committee may recall that Ms. Evans and Mr. Gabel appeared at last Wednesday's print hearing. After hearing objections from at least two senators, and at the suggestion of the Chairman, the prior RS was withdrawn. Slight revisions were made to hopefully address the concerns of the Committee members and Mr. Gabel is here today to present the revisions. **RS-22460C1** proposes changes to current Board of Nursing statute that establish grounds for denial of an application for nurse licensure and disciplinary action against an existing nursing license. The changes proposed in this RS more fully protect the public by broadening and clarifying grounds for discipline.

The statute is broadened by authorizing the Board, in the exercise of sound discretion, to impose appropriate disciplinary sanctions whenever an applicant or existing licensee has been formally disciplined, in any fashion, by another nurse licensing agency. Current statute only authorizes the Board to act if the discipline in the other jurisdiction was either a revocation or a suspension.

The second amendment is the addition of sexual misconduct with or sexual exploitation of a patient or former patient as specific grounds for discipline against an applicant or licensee. A change was made, at the suggestion of members of the Committee at last week's hearing, to clarify that the conduct would be evaluated using a reasonable person standard. This proposed amendment is in response to a recent court decision holding that the Board's current authority is vague and insufficiently clear to impose discipline against a nurse who engaged in sexual misconduct. This change provides the statutory basis for subsequent promulgation of appropriate rules defining the terms and otherwise implementing the statutory provision. This proposed legislation presents changes that are consistent with national uniform licensure requirements adopted by the National Council of State Boards of Nursing, and endorsed by the Idaho Board of Nursing. These changes provide greater uniformity and consistency between states. This proposed legislation has no fiscal impact.

Senator Hagedorn asked if there were any nurses who were currently counseling persons with sexual maladies.

Mr. Gabel stated that he did not have any specific information to answer Senator Hagedorn's question.

Senator Hagedorn referenced the language in the RS that stated that it is a violation to engage in conduct with a patient that is sexual, and that his concern was that if a nurse were counseling someone with a sexual malady, it could be interpreted as a disciplinary issue.

Mr. Gabel replied that this is where the sound discretion of the Board of Nursing would come into play, that the Board would know the difference and would not take discipline against such a situation.

MOTION: **Senator Bock** moved, seconded by **Senator Guthrie**, to print **RS 22460C1**. The motion carried by **voice vote**.

PASSING THE GAVEL: **Chairman Heider** announced that it was time to continue with rules, and passed the gavel to Vice Chairman Nuxoll.

DOCKET NO. 16-0309-1301 **Rules Relating to Medicaid Basic Plan Benefits: Pat Martelle**, Program Manager of the Office of Mental Health and Substance Abuse in the Division of Medicaid, stated that she was pleased to present rules written to support the implementation of managed care administration of Medicaid-funded behavioral health services. These rules are temporary proposed rules with the implementation date of September 1, 2013, the date the Department of Health and Welfare's (Department) managed care contract went live with United Health's behavioral health platform, Optum Health (doing business in Idaho as Optum Idaho).

These rules focus on the requirements necessary for managed care administration of Medicaid-funded mental health and substance-use disorder services, collectively known as "behavioral health" services. H 260 from the 2011 Idaho Legislature provided direction to the Department for the development of Medicaid managed care plans. Idaho Code directs the Department to implement managed care tools to develop an accountable care system to improve health outcomes. Following the enactment of Idaho Code § 56-261 Medicaid began the work of formalizing stakeholder input on what such reform should look like for behavioral health services.

Medicaid had been meeting with stakeholders since 2004 to address needed reforms in the benefits and delivery system for behavioral health services. With the statute in place, Medicaid recognized the value of documenting distinct stakeholder input in the development of the transformed system. In an effort to provide a representative forum, Medicaid invited representatives from varying stakeholder perspectives: consumers, behavioral health providers, advocates, primary care providers and the Governor's State Planning Council on Mental Health. The forum was also open to the public. The forum was telecast statewide. Information taken from this forum was used to inject the RFP with requirements linked to very real and heartfelt concerns and desires of behavioral health stakeholders based on their lived experiences.

The State's procurement process led to awarding Optum Health the managed care contract. Optum Health is nationally accredited by the National Council on Quality Assurance (NCQA) that puts Optum in position to create a higher standard of care for the Medicaid population. This is a capitated contract, based on actuarial analysis of the costs of behavioral health over the three year period from 2011-2013. Simultaneous to the procurement process, the State entered into a collaborative process with its federal partner, the Centers for Medicare and Medicaid Services (CMS), to develop a 1915(b) "Freedom of Choice" waiver in order to provide the State with the authority to switch from a fee-for-service reimbursement model to one of managed care administration. This is a waiver of the Medicaid participants' right to choose their provider so that one statewide managed care company can administer the behavioral health program.

Members are still able to choose their provider within the Optum network. The waiver is a technical document describing federal requirements and providing state assurances for protections Medicaid participants are guaranteed in the newly developed managed care behavioral health plan, named the Idaho Behavioral Health Plan (IBHP). The waiver was approved by CMS last summer.

In summary, these rules: require Medicaid participants to enroll in a statewide outpatient behavioral health plan; require the use of evidence-based practices in the delivery of services; integrate the service of mental health clinics, psychosocial rehabilitation (PSR) agencies, service coordination agencies and substance use disorder agencies into one "behavioral health" service system; and replace artificial service limits with a care management process that relies on individualized clinical reviews of a member's medical necessity for services.

These rules are targeted to the managed care contractor, not the provider network, because the network is not enrolled with Medicaid any longer. The provider network is enrolled with the managed care contractor.

Vice Chairman Nuxoll asked if this all dealt with outpatient, and **Ms. Martelle** confirmed that it did. **Vice Chairman Nuxoll** asked what is "Healthy Connections" that is referred to in the context. **Ms. Martelle** replied that Healthy Connections is the primary care managed program that has been in place for over ten years in Medicaid.

Senator Bock asked if there were any parts of this that were controversial or had negative input, and asked the audience if there was anyone present who would be testifying against this long rule.

Ms. Martelle responded that public hearings were held and no one attended. One comment regarding the rule clarification was received. To date, there have not been any concerns about the text.

Senator Martin asked if the contract was readily available to the provider, to understand the types of services to be provided and the level of compensation assigned for those services.

Ms. Martelle replied that a contract is a public document that is available to the public information request process, and work is being done with the Department of Administration to provide another opportunity for the contract to be available publicly. The contractor has published its fee schedule on its website that providers can access, and when a provider enrolls with the contractor to be a part of their network, the provider receives a hard copy of the fee schedule.

Senator Hagedorn stated that it is difficult to find what the agreement is between the State and Optum on the Optum website.

Ms. Martelle referred to David Simnitt, Deputy Administrator of the Department of Health and Welfare in the Division of Medicaid. **Mr. Simnitt** stated that the contract with the managed care contractor is a public information document. The contract will be posted on the Division of Medicaid's website, and the public will have immediate access via the Internet.

Senator Hagedorn commented that the Idaho Administrative Procedures Act (IDAPA) is typically where the public goes to look for information, and that the agreement between the State and Optum is not on the IDAPA website.

Paul Leary, Administrator of the Division of Medicaid, stated that on the Optum website there is a section for members and a section for providers. Under the member section, there is a handbook that goes through the available services, what services are covered, explains the grievance and appeals processing, and all other processes that one might need. Under the provider section, there is also a handbook.

Senator Hagedorn asked Mr. Leary if the legislative rules review process is applied to the contract as daily changes are made.

Mr. Leary replied that the legislative appeals process rules do apply in the contract.

Senator Lakey asked that if an individual has a grievance or concern with a coverage decision, is there a process they can go through to challenge that denial.

Ms. Martelle answered that there is.

Senator Lakey asked if the process for challenging a denial of coverage or services is addressed in the contract.

Ms. Martelle replied that it is in the contract.

Senator Lakey commented that if an individual had a claim previously under the rules for a grievance and took it through the process internally with the Department, there would be standing for them to challenge the denial in court based on noncompliance with the rules. Does a violation of the contract from the perspective of an individual give them the ability to pursue it to district court?

Mr. Leary stated that individuals have the right of appeal with Optum, and if they are not satisfied at the end of the second level of appeal with Optum, they can go through the Department of Health and Welfare's appeal process.

Senator Lakey asked Mr. Leary if the contract would change an individual's grievance rights.

Mr. Leary responded that an individual can appeal any decision.

Senator Lakey then asked about contract amendments being subject to rule amendments; is there an ability to scrutinize a change in the rules through this process? He asked if there was the ability to scrutinize a change in the contract that would have previously been addressed in rule but now is addressed between the Department and Optum?

Mr. Leary replied that the contract is developed under state statute. In order to make changes to the state plan, we need legislative direction, which comes through Idaho Code § 56-255, that defines the services that Medicaid can provide, or it would come under requests for an additional waiver if we were going to waive services.

Senator Schmidt referred to the section of the rule that states: "Participants must utilize the complaint, grievance, and appeal process required by the contractor prior to initiating an administrative appeal with the Department." He asked how the contractor determines eligibility verification.

Ms. Martelle stated that the Department makes a file available to the contractor on a daily basis that contains that information.

Senator Schmidt then asked if the eligibility is determined by the Department that is communicated to the contractor. **Ms. Martelle** confirmed that was correct.

Senator Hagedorn requested that Dennis Stevenson, Administrative Rules Coordinator for the Department of Administration, yield for a question about the rules. He asked that under the Administrative Rule Act, how is public input or negotiated rulemaking managed with a contract outside of IDAPA that might change with amendments. He also asked how does the Legislature review and have oversight on those rules or amendments.

Dennis Stevenson responded that unless the information is published in the Administrative Bulletin, it is not something that is shareable. This is not a document that would be incorporated by reference. A contract falls outside of what is allowable as far as incorporation by reference goes in those rules. Only rules that have been amended come before Committees, whereas a change to the contract would not.

Vice Chairman Nuxoll asked what "ambulatory" meant.

Ms. Martelle replied that it means services that are outpatient.

Vice Chairman Nuxoll then inquired about the part of the rule under Prior Authorization that states that some providers may require prior authorization from the Idaho Behavioral Health Provider (IBHP) contractor. How are providers selected?

Ms. Martelle responded that the Department did not make a decision about what providers would be enrolled in the contractor's network. It is the responsibility of the contractor to recruit, enroll, train, and reimburse the provider network.

Vice Chairman Nuxoll asked why some providers were not accepted.

Ms. Martelle explained that 97 percent of the provider agencies that were enrolled with the Department under the fee for service reimbursement model joined the Optum network. Some of those who did not join, did so by choice. This managed care company is National Committee for Quality Assurance (NCQA) accredited, and they operate under a higher standard of care. There may have been an agency that was unable to meet the requirements.

Vice Chairman Nuxoll asked if that happened because a Master's equivalent to supervise was required.

Ms. Martelle replied that there had to be a Master's level clinical professional in a supervisory role at all locations.

Senator Hagedorn stated that he assumed that was an Optum choice. The Legislature has no oversight or review on that criteria or process, and sought confirmation that his thought was correct.

Mr. Leary informed the Committee that the Legislature gave clear direction to ensure that all mental health providers were nationally certified, which came out of H 260, and is part of the certification process. The NCQA certification that Optum provides is the easiest way to be certified.

Senator Schmidt asked about the wording in the section regarding psychiatric telehealth, where it says: "This rule does not apply to outpatient behavioral health services provided through the Idaho Behavioral Health Plan (IBHP) that are delivered via telehealth methods." He asked what is meant by the term "this rule."

Ms. Martelle replied that section of the rule applies to physicians, and that it needed to be clearly stated to avoid misinterpretation by providers. These rules, written to govern physician practice, apply under the Optum contract and set the parameters for the psychiatrists it enrolls.

TESTIMONY:

Alan Humble, who worked for the Joint Commission for 20 years, stated that they compete with NCQA for business. NCQA, the Joint Commission and others that are similar are large businesses that are highly political and their revenue is streamed from the very people that they are accrediting. The material that is being reviewed today was written by Optum, specified by the State and the patient is rarely embodied in any concerns. He referred back to an earlier question of how to register a complaint, which he described as tedious. The Joint Commission would say to put the patient first. Patients need to be utilized more in these types of discussions.

Kathie Garrett, on behalf of the National Alliance on Mental Illness (NAMI) Idaho, stated that NAMI supports Idaho's move to a Medicaid mental health managed care system if it is used as a tool to be more effective and more efficient, and to provide a better service to those Idahoans who have mental illness. NAMI is working with Optum and had concerns about the rules, as well as the prior rules repeal which dealt with members' rights and rights to file grievances. Today's meeting covered many of those concerns in a positive manner.

Greg Dickerson, Treasurer of the Mental Health Providers Association of Idaho, commented that this docket repeals the rules governing State Plan Basic Mental Health benefits and replaces those sections with general requirements for the Idaho Behavioral Health Plan under the administration of Optum. He informed the Committee that he has served as a provider representative on the Optum Advisory Committee. He voiced concerns about the limited contract that these rules describe, and whether the needs of members will be sufficiently met. He urged legislators to monitor this contract going forward.

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 before a vote is taken, she wished to inform everyone present that there was a hearing concerning Optum, that the Committee is very concerned about patients, and agreed that we will move forward cautiously. She furthered that the delays in answering the phones were addressed and have improved. Her personal opinion was that Optum, being a national organization, was troublesome to her because of the difficulties they'd had in Idaho. She wished to have her comments recorded.

Senator Hagedorn stated that was troubled by the move. Idaho is very unique in the fact that we have IDAPA and elected officials who review those rules to ensure that what we are implementing meets the intent of the bills that we pass. It is concerning that we are relinquishing that ability under this particular contract by the strike outs in this rule.

Vice Chairman Nuxoll asked Senator Hagedorn if he had a solution.

Senator Hagedorn replied that all the processes in the contract should be replicated in IDAPA, which would be a long term solution.

MOTION:

Senator Bock moved, seconded by **Chairman Heider**, to adopt **Docket No. 16-0309-1301**. The motion carried by **voice vote**.

Senator Martin commented that he commended the Department of Health and Welfare and Ms. Martelle for the direction we are going. He furthered that a number of people are voicing concerns, and that there is a duty and responsibility to listen and address those issues. He hoped the process would work.

**DOCKET NO.
16-0310-1301**

Relating to Medicaid Enhance Plan Benefits: Pat Martelle informed the Committee that this docket is the companion docket to the docket that was just discussed. Prior to the implementation of managed care, the rules for substance use disorder and mental health services were spread across two chapters: Chapters 9 and 10. They represent the basic and enhanced level of benefits. Under this managed care contract, there is no need for a basic and enhanced level of care. The contract covers all needs according to medical necessity. In Chapter 10, we struck out all references to the mental health services because it is no longer applicable.

Vice Chairman Nuxoll asked for further explanation on service coordination.

Ms. Martelle replied that the rules are no longer relevant regarding the benefit of service coordination for the purposes of individuals who have mental illness. It would be an overlay of Optum's authority on how these benefits will be delivered.

MOTION: **Senator Martin** moved, seconded by **Senator Lodge**, to adopt **Docket No. 16-0310-1301**. The motion carried by **voice vote**.

PASSED THE GAVEL: Upon the completion of rules, Vice Chairman Nuxoll passed the gavel back to Chairman Heider.

ADJOURNMENT: **Chairman Heider** thanked the Committee members for working through the rule process. There being no further business before the Committee at this time, **Chairman Heider** adjourned the meeting at 4:30 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary