

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

- DATE:** Tuesday, February 11, 2014
- TIME:** 3:00 P.M.
- PLACE:** Room WW54
- MEMBERS PRESENT:** Chairman Heider, Vice Chairman Nuxoll, 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 3:00 p.m. and welcomed the audience. He asked the secretary to take a silent roll.
- PRESENTATION:** **Rakesh Mohan**, Director, Department of Health and Welfare (Department), began his presentation regarding the Department's management of appropriated funds by reporting on a project they completed last December. He reported that concerns were voiced at the last legislative session by Senator Schmidt with reference to the complexity of the Department, the size of the Department, and the big budget of \$2.5 billion. **Mr. Mohan** stated that it is very difficult to track the movement of the money through the agency. He pointed out that Senator Schmidt did not have concerns regarding wrongdoing, and that he didn't say anything negative about the management of the agency. The Senator only wanted to better understand how the Department manages the funds and how the money moves. The Cooperative Welfare Fund (Fund) has funds from different sources which are commingled into one fund, and then are distributed from there.
- Mr. Mohan** related that they did not realize how difficult this project was going to be. This report was completed after many conversations with several legislators, as well as Department officials in order to understand the issue, the context and the scope of the study. **Mr. Mohan** emphasized that he and his staff wanted to make this report useful to the Legislature and to the Department. He then introduced Lance McCleve who played a major role in the production of this report.
- Lance McCleve**, Office of Performance Evaluations, Idaho Legislature, said he is here to present the Department of Health and Welfare's Management of Appropriated Funds Evaluation Report (Evaluation Report). **Mr. McCleve** explained that the report focuses on JFAC and those who would be working on the Department's budget. The report is geared toward the Department's finances, but it also has policy relevant to the Legislature obtaining information when considering how the Department has spent appropriated dollars for specific programs or areas, and how their finance data is tied to their policy or program implementation data.

Mr. McCleve said there were a couple of key findings from the study. He explained that financial information is complex, but it is understandable. The Fund is a single fund that pools the bulk of the Department's appropriation into one fund from which they can expend money throughout the year. Financial management systems are set up for federal reporting and are not prioritized for legislative reporting, an important consideration when the Legislature is trying to get information from the Department. He stated that the last key finding was that the Department's physical organization is comparable to similar agencies in other states. Like Idaho, the health and welfare agencies in most other states combine one or more of the major federal programs.

Mr. McCleve stated that he would report on the State's accounting system (STARS) and its relationship to the Department, the Fund and how it relates to STARS, the Department's internal systems, transfers throughout the year, and a few other considerations.

As pointed out by **Mr. McCleve**, STARS was not intended to meet all the demands of the Department's financial reporting or recording. He explained that when the program first came online the Department worked with the Controller's office to see if it would meet the needs of the Department. Cost allocations, a federal reporting requirement, was a capability STARS did not have and using it would have been cost prohibitive, so FISCAL, a modified version of STARS, which is used internally and which interfaces with STARS, was selected to use with STARS.

Mr. McCleve reported that the Fund dates back to before STARS and essentially allows the Department to be flexible in how they make payments and how they do cash deposits. He went on to say that the Department, by using the Fund, is able to effectively pay their transactions in a way that they do not have to identify at the time of the transaction whether funds are general funds, federal funds, or dedicated funds. This same flexibility applies to cash deposits in that they do not have to identify the time of the transaction or the fund source. The Fund also helps limit costs of transactions with the Controller's office, so having the single fund house general funds, federal funds, and dedicated funds allows the Department to make fewer transactions than they would otherwise have to make.

Mr. McCleve reiterated that the Department's financial systems are not optimized for legislative reporting. The systems are responsive to federal reporting requirements since most of the Department's finances come from federal funding sources that require specific types of reports and information in order for the State to be paid for services offered. He pointed out that FISCAL is an aging system and is limited in its capabilities to report and track data. In looking at priorities, FISCAL was modified to report federal requirements, leaving a gap in legislative reporting needs.

In referring to cost allocations, **Mr. McCleve** explained that FISCAL uses a system of lookup tables to relate data from the financial systems to other data, eg. cases worked or calls received, that the Department uses for federal reporting. These statistics are used to determine how costs will be allocated to federal grants. He further said that there is data showing that a particular service was performed in a particular way resulting in a situation that is applicable to a specific federal grant, so costs are charged to that federal grant. The way FISCAL manages that procedure is in the lookup tables. He pointed out that if the Department hasn't set up the correct relationships in the lookup tables, the data will not be associated with other types of program data. So specific questions that are not something that federal grants are asking to be reported will not be related in a way that permits the Department to readily provide answers to the legislature. Examples and charts can be found in the Evaluation Report.

Mr. McCleve stated several considerations that should help policymakers be able to work with the Department to get the kind of information that will help with policy and budget decisions:

- Consider the advantage of requesting information from the Department as early as possible. This has to do with long-term reporting needs by the Legislature so the Department can set up long-term relationships to track that information over time and put the information into FISCAL's tables.
- Consider requiring a detailed transfer report from the Department geared toward budget, policy and JFAC if policymakers or budget policy need to see more specifically how money is moving around within the Department.
- Consider automating more of its year end processes having to do with more timely reporting, less load on staff, and more accurate reporting.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee Secretary (see attachment 1).

Senator Schmidt asked if it was correct that transfers affect around 4 percent of the Department's funds.

Mr. McCleve replied that statement was correct for 2013; it was about 4.2 percent.

Senator Schmidt pointed out that Mr. McCleve had said in the Division of Physical Health it was 0.3 percent. He asked if there was one division that had a significantly higher transfer rate.

Mr. McCleve said the transfers are broken down within divisions and across division by type. He added that he could get exact numbers but that he didn't have them with him. He pointed out that in looking through transfers, no single division stood out significantly.

Senator Hagedorn asked about the wiring diagrams and asked for an explanation of the grey area.

Mr. McCleve responded that the grey going across is everything that was spent exactly as it was appropriated.

Chairman Heider thanked Mr. Mohan and Mr. McCleve, commenting that the work was very informative and very complex.

H 348

Relating to Uniform Controlled Substances, to provide that a recipient of a dispensed controlled substance, or the recipient's designee shall have access to monitoring program data: **Mark Johnston**, Executive Director, Board of Pharmacy (Board), stated that the Board is statutorily required to maintain a State's prescription monitoring program (PMP) whereby the Board collects certain data on dispensed controlled substances, collates the data into patient profiles, and makes the data available to authorized users listed in Idaho Code § 37-2726, Subsection 2. He explained that while the most frequent users are prescribers, pharmacists, and law enforcement, an individual or that individual's attorney may receive PMP data that pertains to that individual. Southworth Associates is the peer assistance entity that administers the Board's Pharmacy Recovery Network for Impaired Pharmacists, as well as the Physicians' Recovery Network and other similar program at the Board of Nursing, Dentistry, and for the attorneys.

Mr. Johnston presented a case in which a physician's assistant in a recovery program died due to an overdose of prescription drugs. This occurred because the physician's assistant produced a valid prescription for the medication for each positive drug screening and received enough of the drug from different prescribers which, in combination, constituted a lethal dose. **Mr. Johnston** stated that Southworth Associates, as the peer assistance entity, believes that PMP access to data for the professionals in their recovery network can prevent more cases like this one.

Mr. Johnston explained that this legislation would provide for an individual to have any designee receive their PMP data, not just their attorney. As people enter a recovery network it would be easy for the enrollee to sign, along with other documents, a contract naming a peer assistance entity to receive PMP data. He also indicated that the Idaho Medical Association was in support of the bill.

Senator Schmidt asked if the individual couldn't print out his/her own record and give it to a peer assistance entity.

Mr. Johnston replied that they could print it out, but if they wanted to hide that fact they wouldn't have to produce the report.

Senator Hagedorn referred to the bill and quoted page 1, line 28: " Authorized individuals under the direction of the Department of Health and Welfare for the purpose of monitoring and enforcing ..." and asked if Southworth Associates would fall under that particular portion of the bill under current existing law.

Mr. Johnston noted that Southworth Associates is a private entity, defined as a peer assistance entity by Idaho Code giving them some structure, but they do not answer to any government agency.

MOTION:

Senator Bock moved, seconded by **Senator Nuxoll**, to send **H 348** to the floor with a **do pass** recommendation. The motion passed unanimously by **voice vote**. Senator Bock will carry the bill.

H 349

Relating to Uniform Controlled Substances, to revise the list of Schedule III Uniform Controlled Substances, and to revise the list of Schedule IV Uniform Controlled Substances: Mark Johnston, Executive Director, Board of Pharmacy (Board), quoted Idaho Code § 37-2702(d): "If any substance is designated, rescheduled or deleted as a controlled substance under federal law and notice is there given to the Board, the Board shall similarly control the substance under this act after the expiration of 30 days." He pointed out that the Board must update Idaho's schedule of control substances annually as mandated by Idaho Code § 37-2714. **Mr. Johnston** stated that this proposal accomplishes the Board's statutory requirement to update the scheduling, that the substances listed are already controlled substances in Idaho, and that this bill will just put the substances into print.

Mr. Johnston reported that there are four controlled substances this year, two designer steroids listed with other steroids in Schedule III, a depressant listed in Schedule IV, and a stimulant used for weight loss listed in Schedule IV.

Senator Nuxoll asked if it was correct that these are already listed as controlled substances.

Mr. Johnston answered that under the law the Drug Enforcement Administration (DEA) publishes a notice in the Federal Register that they are going to control a substance. The Board then has 30 days to object and if there is no objection the substance becomes scheduled in Idaho. These newly identified substances cannot be listed in the schedules until the Legislature takes action and allows the Legislative Service Office to make that printing. **Mr. Johnston** explained that they are controlled substances, but you cannot go to the printing and see them yet.

Senator Nuxoll asked if it is correct that the federal government made them controlled substances and Idaho was just following them.

Mr. Johnston replied that is correct because the Board did not object within their 30 day period. The State can't ignore it's responsibility of scheduling by delegating that to a federal agency like the DEA.

MOTION:

Senator Hagedorn moved, seconded by **Senator Martin**, to send **H 349** to the floor. The motion passed unanimously by **voice vote**. Senator Hagedorn will carry the legislation.

H 350

Relating to Uniform Controlled Substances to clarify that controlled substance distributors must verify that persons receiving distributions containing controlled substances are registered with the Drug Enforcement Agency and the Board of Pharmacy unless exempted by state or federal law: **Mark Johnston**, Executive Director, Board of Pharmacy (Board), pointed out the Board covers areas other than pharmacy, including drug outlets and is charged by statute with regulating the wholesale distribution of drugs into Idaho. He stated that in 2007 the Legislature passed the Idaho Wholesale Drug Distribution Act which mandated that wholesalers only furnish prescription drugs to a person licensed by the Board or another appropriate licensing entity like the Board of Medicine. But the law did not require that a wholesale distributor only furnish controlled substances to those who possess a Drug Enforcement Agency (DEA) and an Idaho Controlled Substance registration. In the last year the Board has found several shipments from wholesalers to prescribers who are not properly registered to receive these substances. He said this bill will take care of that issue.

Mr. Johnston stated that the Attorney General's office identified another topic which the Board added to this bill to address this concern. The current law states that a registrant must be located in the 50 states or the District of Columbia. Federally the U. S. territories have the same rights as the states, so our language unfairly does not allow registrants from the territories. He emphasized that striking that language from the law does not mean the drug outlets and pharmacists from foreign countries can obtain a registration as the law says elsewhere that an applicant must be licensed or registered and in good standing in a state in which they reside. "State" refers to the 50 states, District of Columbia, and U. S. territories, but not foreign countries. **Mr. Johnston** received oral verification from HDMA, the wholesalers' national association, that they are not opposed to this bill.

Senator Nuxoll asked Mr. Johnston to clarify what will be restricted with this change.

Mr. Johnston replied that the Board is mandating that the people to whom the distributors send controlled substances have authority to receive controlled substances, namely that they have a DEA registration and an Idaho Controlled Substance registration.

Senator Nuxoll asked who has the right to receive controlled substances now, without this bill.

Mr. Johnston responded that nobody has the right to send controlled substances to somebody who is not properly registered. This is happening, though, and that is what the Board is trying to remedy.

Senator Nuxoll requested more clarification on exactly what will be restricted as a result of this bill.

Mr. Johnston gave examples of professionals who had been registered at one time, but after retiring and their registration lapsed, they continued ordering controlled substances which they abused in their homes. These are the things the Board is trying to stop by requiring the sellers of controlled substances to make sure the people receiving the drugs are still registered.

Senator Nuxoll explained that it bothers her that we often restrict something because the federal government is asking us to. She stated that we can't cover every abuse, but we may be restricting some freedom and therefore limiting competition.

Mr. Johnston replied that without this bill people without prescriptive authority, such as chiropractors and naturopaths, could be shipped controlled substances. He went on to say that without the requirement of registration, controlled substances could be shipped to anyone in Idaho, even children.

Senator Nuxoll asked what is wrong with a naturopath or chiropractor getting these substances. Are they getting them now and they can use them, but this will restrict them?

Mr. Johnston explained that they are not permitted to have them by law. Perhaps their own boards and criminal law will take care of the abusers in Idaho, but this bill would allow us to take action against the distributors who ship the drugs illegally into Idaho.

Chairman Heider reiterated that those drugs could only be shipped to someone who is licensed to receive them. He asked if that was correct.

Mr. Johnston replied that Chairman Heider was correct.

Senator Hagedorn asked what the reason would be to not ship these controlled substances to someone who is not licensed.

Mr. Johnston indicated that the law currently states that a wholesale distributor should not furnish prescription drugs to anybody who is not properly licensed, but it does not go on to say "and ship substances to somebody who is not properly registered" with the DEA and with Idaho. A prescription drug is a controlled substance and should not be shipped into Idaho anyway, but the prosecutors are not comfortable with that and they want it plainly stated that you need a controlled substance registration in order to receive controlled substances.

Senator Hagedorn asked, "What is the difference between someone who is licensed to receive it and someone that is not licensed to receive it, like my son?"

Mr. Johnston replied that the difference is who is doing the shipping. He pointed out that this is a change to the Idaho Wholesale Drug Distribution Act and regulates wholesalers and manufacturers. He explained that the Senator's son can receive prescription drugs through a valid prescription drug order from a pharmacy, including a mail order pharmacy, but a wholesaler can't ship them to the son because he is not legally able to receive them without that valid prescription drug order. He also clarified that the law extends to all controlled substances.

Senator Guthrie indicated that the new portion states that they can ship only to a person who has been issued a valid controlled substance registration by the DEA and the Idaho Board of Pharmacy and asked if there would be an issue in taking out the DEA. He also asked for an example of something that would be exempted under state or federal law.

Mr. Johnston responded that Idaho exempts what the federal government exempts, i.e. Indian Health Services, the Veteran's Administration, the Mountain Home Air Force Base. He stated that if you work on a federal piece of territory you are exempted from having a DEA registration so you are also exempt from having the Idaho Controlled Substance registration.

With regard to Senator Guthrie's first question **Mr. Johnston** did not think there would be a problem with removing the DEA from the requirement if there is the perception that enforcing federal law is an issue. He explained that because there is a reciprocal relationship wherein DEA won't issue a registration unless the applicant has an Idaho controlled substance registration, and Idaho has a law that says the same thing with regard to federal registration, they literally access the registration system at the same time and issue the registrations at the same time. Therefore, issuing the registration would be the same without the enforcement of federal law being included.

MOTION: **Senator Schmidt** moved, seconded by **Senator Hagedorn**, to send **H 350** to the floor with a **do pass** recommendation. The motion passed by **voice vote**; however, **Senator Nuxoll** voted nay and wished to be recorded as such.

MINUTES APPROVAL: **Senator Lakey** moved, seconded by **Senator Bock**, that the Minutes of January 15, 2014, be approved. The motion passed by **voice vote**.

Senator Hagedorn moved, seconded by **Senator Schmidt**, that the Minutes of January 21, 2014, be approved. The motion passed by **voice vote**.

Senator Martin moved, seconded by **Senator Schmidt**, that the Minutes of January 22, 2014, be approved. The motion passed by **voice vote**.

ADJOURNED: **Chairman Heider** adjourned the meeting at 3:50 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary

Carol Cornwall
Assistant Secretary