

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, March 05, 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 welcomed everyone and called the meeting to order at 3:10 p.m.

HCR 43 **Relating to oral health: Representative Paul Romrell** presented the resolution which:

- recognizes the importance of oral health as part of overall health affecting speech, nutrition, growth, quality of life, etc.;
- supports the effort to improve the oral health of all Idahoans;
- promotes consistent state and local policies that consider the impact on oral health;
- promotes the use of available resources to monitor oral health and supports community health initiatives aimed to improve oral health outcomes;
- recognizes the importance of oral health for the well being of Idaho's children;
- recognizes that dental decay is the most common chronic disease among children;
- recognizes that untreated dental disease is linked to adverse health outcomes; and
- recognizes that students miss more than 51 million hours of school and adults lose more than 164 million hours of work each year due to dental disease or dental visits.

Representative Romrell explained that promoting more access to care will lead to higher utilization. Idaho has improved access for children enrolled in Idaho Smiles, Idaho's dental program for Medicaid children. The resolution generally supports the efforts towards improved oral health, promotes awareness of the benefits of oral health and recognizes the efforts made in Idaho. **HCR 43** would designate February as Oral Health Awareness Month. He stated that this resolution has no financial impact.

MOTION: **Senator Guthrie** moved that **HCR 43** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion passed unanimously by **voice vote**. Senator Guthrie will carry the bill.

Relating to hospital databases and advisory committee: Representative John Rusche explained that this resolution calls for the development of a plan for health data information. The request for a plan was brought by the Health Data Planning Commission (Commission) which was established in 2006 by the Legislature. The Commission was given the tasks of developing the electronic health information exchange and monitoring and reporting on issues of quality and safety. The Commission focused on issues of health care quality and patient safety. This Commission is the only entity in Idaho where those involved in health care meet to look at the systemic issues bridging the gaps between providers, insurers, employers and families. **Representative Rusche** said that the Commission has been hampered by the lack of data on health system performance, and as a result requests that an information source be developed. Other stakeholders have also requested more information. The State Health Innovation Plan (Plan) recognizes the role of the Commission and that accurate information will assist in developing the best clinical results.

Representative Rusche went on to state that there have been increasing calls for market transparency from hospitals and the medical industry. In order to create and present reports, the data needs to be collected, aggregated and reported. This resolution provides the basis for developing information that can be used for patients in selecting their care.

According to **Representative Rusche**, **HCR 49** calls on the Department of Health and Welfare (Department), along with stakeholders in the industry, to develop a plan for the creation of an Idaho health information capability. **Representative Rusche** pointed out that Idaho is one of two states that do not have a health data structure. Various ways to structure the capability include a state agency, a not for profit entity, or a hospital association contracted to deliver the service. It is important to make the data easy to submit and to understand. He went on to say the Plan will include estimates of costs and suggestions on how to cover those costs.

Senator Martin asked about the fiscal note which states that it is likely that there will be no fiscal impact, but then indicates that there will be and that the impact may be ongoing.

Representative Rusche replied that the estimated cost of convening the planning group is about \$30,000. It is submitted as a portion of the State Health Innovation Plan Grant (Grant). If it is not funded by the Grant there are other grant sources to pursue. If no grant monies are received, then the cost will go to the State. The \$30,000 will not cover the cost to run the full data capability, and that cost, depending on the structure, can range from \$200,000 to as much as \$2 million. That would be part of the Plan, to decide how much can be expended.

Senator Martin asked if this establishes the ongoing process or if it just sets up the panel.

Representative Rusche answered that it impanels a group of industry experts to build the Plan.

Chairman Heider asked if the Department has accepted this concept and if they are funding it initially.

Representative Rusche said it is part of the Plan, and they agree that it is a necessary component. He added that they did not agree to pay the initial \$30,000.

Chairman Heider reminded the Committee members of Dr. Epperly's prior presentation on the State Health Innovation Plan.

Senator Nuxoll asked if this is part of the Plan.

Representative Rusche replied that health data acquisition, analysis and reports are part of the Plan. You can't build your grant request until you know what the plan is. You can't do the aggregation, analysis and reporting of data until you acquire the data.

Senator Nuxoll asked how this affects those who do not want their information in the data system.

Representative Rusche responded that the system does not individualize medical records, but rather aggregates public health data. It gives no identification but is about services and the cost of those services.

Senator Lakey asked for the Representative to remind him if the Plan comes back for approval after it is put together, and what kind of authority it has until it is approved.

Representative Rusche stated that there will be some statutory and/or some appropriation requirements. It is possible that the stakeholders will all agree that they will collect data in a not for profit way that is not governmental, but that is not likely. There is no intent on the part of the State to go forward unless a plan is brought back to the Legislature for approval and funding if necessary.

TESTIMONY:

Steve Thomas, representing the Idaho Association of Health Plans (IAHP), spoke in support of **HCR 49**. He stated that of particular interest to IAHP is the distributive approach to the collection of health data which allows the data to remain with IAHP (and other contributing organizations) where it is secure. The Plan establishes a query for the IAHP database. IAHP runs it through its database and returns the aggregated information to the Plan. This approach does not require building and housing an expensive new database so it is less costly and more efficient, and it minimizes privacy concerns. **Mr. Thomas** referred to a document provided by BlueCross BlueShield Association (see attachment 1) stating that the paper supports the proposals in **HCR 49**. He explained that the IAHP is not commenting on or committing to any funding issues as that is a separate matter.

Senator Schmidt asked if the people with the databases would need to agree that everybody responds in a like manner so it is a mutually shared agreement.

Mr. Thomas responded that it would come up as part of the Plan with a uniform query methodology so basically the same query goes out to all carriers enabling the data to come back in a meaningful way that would be compatible as it is reassembled.

Senator Hagedorn asked why the Department is required to do this. He asked why the private sector couldn't do it on its own.

Mr. Thomas said the IAHP doesn't have an objection to the private sector doing it on its own. As the legislation was presented, the Department would get it started, but the study group may come up with a plan that is privately generated.

Shad Priest, Regents Blue Shield of Idaho (Blue Shield), stated that Blue Shield is supportive of efforts to improve transparency in health care and supports the resolution as currently worded.

Molly Steckel, Idaho Medical Association (IMA), expressed agreement with Mr. Priest. IMA has had policy for several years for data collection.

Steve Millard, Idaho Hospital Association (IHA), stated that IHA is in support of **HCR 49** because of its deliberate process that will efficiently gather data. He stated that this type of project needs someone, in this case the Department, to bring the stakeholders together and build a plan which could then be transferred to the private sector.

Representative Rusche concluded by stating that this legislation is a first step toward getting the interested parties together to determine the needs for the Plan, resulting in a productive process going forward.

MOTION:

Senator Schmidt moved that **HCR 49** be sent to the floor with a **do pass** recommendation. **Senator Bock** seconded the motion. The motion was passed by **voice vote**. **Senator Nuxoll** voted nay. Senator Schmidt will carry **HCR 49** to the floor.

H 519

Relating to hospitalization and transportation of the mentally ill:

Representative John Rushe gave the history behind **H 519** indicating that restraints had often been used unnecessarily during the transportation of mentally ill patients. There was some opposition to initial attempts to develop this bill, but after receiving input from interested parties and several revisions, **H 519** is the resulting legislation. **Representative Rushe** explained that under this bill if a mentally ill patient has orders that he/she be transported unrestrained, and should the transferring officer need to restrain the patient during transport, then he/she must put a note in the patient's chart. He stated that this is the standard used when restraints are needed in the hospital, that there must be a note so it can be taken into consideration with the treatment plan for the patient. The Fraternal Order of Police was initially opposed to the first draft, but they had no opposition to this final draft.

Senator Martin asked if a note needs to be placed in the medical record when a patient is being transported and is restrained against medical advice.

Representative Rusche explained that as the bill is written, it is "if against the medical advice". He went on to say that if there is an order that the patient be transported unrestrained and restraints become necessary, then the transporting officer needs to put a note in the chart. If there is no order that the patient be transported unrestrained, then the requirement on the transporting officer does not apply.

Senator Schmidt asked what the mechanism is for documenting such an event.

Representative Rusche replied that they could either write a note in the patient chart or they could have a form that the officer would fill out and put into the chart. This would give the reason for the restraints and would affect the therapeutic treatment.

TESTIMONY:

Jim Baugh, represents Disability Rights Idaho (DRI), a private nonprofit organization providing advocacy and legal services to people with disabilities, including those with persistent mental illnesses. **Mr. Baugh** explained that DRI has attempted to find out from people with mental illness the most important thing that could be done to protect their rights. Most of the responses dealt with being handcuffed and put into police cars to be transported from local psychiatric hospitals to the state mental hospital. In Medicaid policy trauma informed care is required. Under trauma informed care restraints must never be used unless it is necessary for the person's safety. **Mr. Baugh** stated that people being transported to the state mental hospital all suffer from some type of serious mental or emotional disorder, but many of those people suffer from disorders that do not cause them to pose a threat to other people. He went on to say that they may have suicidal tendencies but they are not in danger in the back of a police car. **H 519** provides something we can do now to reduce the trauma, to protect the rights and dignity of people with mental illness, and eliminate behaviors that, in our attempts to treat people, actually make them worse.

Mike Kane, Sheriff's Association (Association), stated that the Association worked closely with Representative Rusche. He responded to Senator Schmidt's question by stating that the sheriffs would prefer to be relieved of this burden, and they do not feel that a mentally ill person should be transported in a police car under any circumstances. But many have been adjudicated by a court as being a danger to themselves and/or others, and in those cases where an officer deems it appropriate to handcuff them, we should make reports. **Mr. Kane** added that if those reports are not being made now, they should be to protect the patient's civil rights as well as having documentation for the protection of the sheriff making the decision. **Mr. Kane** explained that they would get the information to the physician's office by email in the form of a standard police report. The Association thinks this procedure is reasonable and they support the bill.

Senator Hagedorn asked if police officers are now restraining patients.

Mr. Kane replied that he could not give a percentage but that patients are being restrained.

Senator Hagedorn then asked if reports are currently being made.

Mr. Kane replied that again he could not give a percentage, but his conversations with the Fraternal Order of Police indicated that reports are not being made as much as they should be.

Kathie Garrett explained that she has worked within the California State Hospital system. In the early 1980s the hospital where she worked wanted to become accredited and had to do some work on how they restrained and secluded patients. It is occasionally necessary to use restraints or seclusion to prevent patients from harming themselves or others, but **Ms. Garrett** emphasized that the National Alliance on Mental Illness (NAMI) has stated in a position paper that there is no therapeutic use to seclusion and restraint; it is a safety issue. She explained that people who have had these procedures used stated that they increased their psychotic episodes, added to their low self-esteem, made them feel like they were criminals, and led to lingering negative memories of their illness and treatment. She added that parents of patients in these circumstances expressed the heartbreak they felt at seeing their loved ones treated in this manner. **Ms. Garrett** expressed her appreciation for law enforcement entities working toward better treatment of the mentally ill and in training their officers in crisis intervention for people in a psychotic state. She stated that **H 519** offers a reasoned approach to address the stated circumstance.

Representative Rusche summarized his presentation stating that if the transporting officer feels there's a need, even if there is an order against it, he can use restraints. He just has to tell people as that is important for the therapeutic path for the patient. It reinforces that mental health patients are not prisoners, but are people who are ill and seeking care.

MOTION:

Senator Guthrie moved to send **H 519** to the floor with a **do pass** recommendation. **Senator Nuxoll** seconded the motion. The motion passed unanimously by **voice vote**. Senator Guthrie will carry **H 519** to the floor.

Senator Bock commented that he was very close to this situation. He has seen a family member in shackles.

Relating to Indigent Sick: Representative Janet Trujillo said this is a bill that will actually put money back into the General Fund, and it has the support of the Governor. She went on to provide a history and an overview of the State Catastrophic Health Care Cost Program (State Program), the County Medically Indigent Program (County Program), and COBRA, leading up to the federal Affordable Care Act (Act). **Representative Trujillo** shared a YouTube video explaining how insurance subsidies work under the Act and then applied those concepts to Idaho.

Representative Trujillo explained that under both the State Program and the Act individuals are required to purchase their own insurance. **H 535** would limit the responsibility of the State and County Programs to cover only those who are at 100 percent poverty level and below as calculated through the Act. Those who qualify for the State Program still must make application. This raises the question of whether the State and County Programs should be responsible to cover individuals when they have the option of purchasing their own insurance.

This bill, according to **Representative Trujillo**, would save the General Fund approximately \$12 million a year, along with a savings of over \$6 million to the counties. She then turned time over to Tony Panelli.

Tony Panelli, Idaho Association of Counties, said that with the State and County Programs as they are now, anybody within the State at any income level could apply based on the size of the medical bill. He then explained the application process.

Senator Bock pointed out that the hospitals are required to provide treatment. He asked if a hospital would have to absorb the expense if an accident victim does not have insurance and the amount is more than he/she can pay. He also asked why this needs to be done now since it will not go into effect for two years.

Representative Trujillo stated that the hospital would be responsible. She stated that individuals are being asked to become compliant with the federal mandate, and that every person has to purchase insurance. Because of the State Program, hospitals in Idaho have not had to suffer these losses. Hospitals have, in their business models, taken into account some of this loss. **Representative Trujillo** then presented the policy question of whether the tax payers should continue to be responsible for that loss or if it should be shifted to those that use the medical care.

Senator Hagedorn stated that currently the federal government does not have the funding required to pay for all of the subsidies and all of the Act, and that it is borrowing 40 percent of the money it does spend. He asked Representative Trujillo what expectations she has that the federal government will change in the next two years to have enough money to pay for these subsidies and make this program continue to work.

Representative Trujillo responded that it is federal law and we are mandated to be compliant, and she is confident the federal government will pay the subsidies. Our own state statutes has the policy that if an individual has the means to purchase insurance, he/she is encouraged to do so. This legislation encourages people to purchase insurance.

Senator Hagedorn stated that under current statute the State Program is the payer of last resort, so everyone should be buying insurance anyway. He asked why we should even change the language, and if we are changing it why we should wait until 2015.

Representative Trujillo replied that by allowing the two years to become compliant, we are providing some time to educate the public, prepare the hospitals, and allow for enrollment time.

Senator Hagedorn referred to Senator Bock's concern that if someone is not compliant and then has those bills, they will come to the State Program. He asked what the incentive is for people to purchase insurance two years from now if they do not have that incentive today.

Representative Trujillo repeated that they will get the education out and ensure that people are purchasing the insurance as mandated. She pointed out that through the Act there are options.

Chairman Heider directed a question to Mr. Pennelli asking what would be done with the mill levy.

Mr. Penelli replied that there is a bill in the House that, if these funds are no longer needed, will drop the mill levy down from a .10 to a .03 because there are still costs that would be covered by the county, such as involuntary mental health care and burial costs. The rest will be written as property tax relief because the levy will drop.

Senator Schmidt asked about the process of determining eligibility as it relates to the amount of insurance that an individual should have purchased.

Mr. Penelli responded that the process will be the same as it is now. The individual's income level will be determined by considering the income at the time of need and looking back six months. This will determine where the individual falls within the poverty guidelines. If the individual is below 100 percent poverty level, the responsibility will fall upon the County and State Programs. If it is over 100 percent the individual has the responsibility.

Senator Schmidt asked who determines the eligibility.

Mr. Penelli replied that it is the applicant's responsibility to fill out the paperwork, and the county will then investigate and make that decision.

Senator Schmidt asked how this would relate to Medicaid eligibility.

Mr. Penelli said that the process for Medicaid eligibility stays as it is now. If the individual is denied Medicaid eligibility, then the application is forwarded to the county.

Senator Schmidt asked if it would be possible that one county could determine that the individual is below the 100 percent level and another county make a different determination.

Mr. Penelli explained that if the federal poverty guidelines are used uniformly throughout the State, there should be no discrepancy.

Senator Lakey stated that he didn't understand that the 100 percent is automatic, but that individuals still have to establish that they do not have income or resources sufficient to pay their bills within five years.

Mr. Penelli replied that Senator Lakey is correct and that the individual still has to go through the indigent process. The county still has to do an investigation and make the determination.

Chairman Heider said that he did not believe that everyone who is above the poverty level will go out and buy insurance.

Mr. Penelli agreed with Chairman Heider. He stated that he felt the Legislature, within the next two years, would decide if continuing the procedure as it is now or if revamping the system would be the best approach to take regarding indigent health care. He suggested that this process would be part of that decision making.

Senator Hagedorn asked if there has been a decrease in cost to the Catastrophic Fund since the Act went into place.

Mr. Penelli replied that it is too soon to make that determination.

Senator Hagedorn asked if an individual applied for assistance from the Catastrophic Fund and an investigation ensued, would the individual's insurance be apparent.

Mr. Penelli responded that the county would see that there is insurance and they would suspend the case until they could ascertain how much the insurance would cover.

Senator Hagedorn asked why it is important to do this right now when we do not yet know the impact of the Act.

Representative Trujillo replied that it is important to do it right now in order to become compliant with the federal mandate, and to decide if the taxpayer should have to pay when insurance is available.

Senator Schmidt commented that county responsibility for indigent health care costs was established in the 1870s.

Representative Trujillo clarified that it was the Catastrophic Fund that was established in 1982. Indigent care is a separate identity. She pointed out that when indigent care was established it was to help nonprofit county hospitals. The State Program was set up to assist with the indigent care. But now it is being litigated by for profit hospitals and the taxpayers are paying for additional medical costs and for litigation costs.

Senator Schmidt asked if this legislation is to promote personal responsibility, why is the line drawn at the 100 percent of the federal poverty level; if it is a good idea to help the State, why we should wait until January of 2016?

Representative Trujillo responded that between 100 percent and 400 percent of the poverty level individuals qualify for the tax credits or the subsidies under the Act, making their insurance affordable. Those below 100 percent do not qualify for the tax credits or the subsidies under the Act. She commented that the time frame was set for two years so the hospitals could transition into this plan, and the people could be educated concerning the mandate.

Mr. Pennelli added that another reason is that things are continuing to change, and that change is uncertain. By waiting the two years, adjustments can be made.

Chairman Heider stated that those uncertain changes are the very reason it seems odd to pass a bill that would go into effect in a couple of years, hoping that things become more idealistic in our State.

Senator Lodge asked Representative Trujillo to state how her philosophy has changed over this last year about the Act.

Representative Trujillo stated that her position on the Act has not changed. She said she does not like it, but it is the law. Because of that we have policy questions within Idaho that we have to answer, whether or not we like the Act.

Chairman Heider asked why we don't wait to pass this bill until we see the outcome regarding acceptance of the Act and the number of those who participate above federal poverty level.

Representative Trujillo replied that it is the law and we are mandated.

Senator Nuxoll stated that she understood the need for education and the help with the Catastrophic Fund.

MOTION:

Senator Nuxoll moved that **H 535** be sent to the floor with a **do pass** recommendation. **Senator Martin** seconded the motion.

SUBSTITUTE MOTION:

Senator Hagedorn made a substitute motion that **H 535** be held in committee. **Senator Lodge** seconded the substitute motion.

Senator Lakey asked if there was anyone else to testify on the bill.

TESTIMONY:

Tammy Perkins clarified that the Governor's office neither supports nor opposes **H 535**.

Jim Baugh, Disability Rights Idaho (DRI), spoke in opposition to the bill, although he understands the importance of the intent. DRI is concerned that, according to the Governor's Health Care Study, the population affected has a largely disproportionate number of people with chronic health care problems, mental illness, and significant disabilities. He stated that the hope is that all of these people will sign up for insurance and that they will not overwhelm the County or State Programs.

Mr. Baugh went on to say that the health care system is very complicated and that we need a comprehensive plan of which **H 535** is a component. He emphasized that a complete plan needs to be developed so there are not unintended consequences. He explained the situation involving the effects of adverse selection on insurance companies. **Mr. Baugh** suggested the Legislature review the private options in Arkansas and Iowa where this group of people move into a different category of health care; they are not just put into the insurance market on subsidized premiums.

Mr. Baugh reminded the Committee that in the evolution of health care two years is a long time, as things are very unpredictable. He suggested waiting to see how things develop before enacting a piece of the solution.

Toni Lawson, Vice President of the Idaho Hospital Association (IHA), stated that the IHA has not taken a position on this legislation. The IHA is concerned about the unknowns that exist with the development of the health care insurance plan. She presented questions in several specific areas that remain unanswered.

Ms. Lawson clarified that other states do have programs to reimburse hospitals for the costs of those who cannot pay, but they are not structured the same way as Idaho's programs.

Senator Hagedorn stated his appreciation for Representative Trujillo's intent on this bill. But there are too many unknowns to change the State Program now, and he is afraid needy people will not have their needs met. He would like to look at the situation again in a year or two when there is data on which to base decisions.

Senator Guthrie said that he likes the idea, but if we wait a year for data the January 1, 2016 date can still be met. He would support the substitute motion.

Senator Bock stated that nothing can change human behavior and not everyone is responsible. He would support the substitute motion.

Chairman Heider expressed that this is an optimistic bill and that he really doesn't think everyone above the 100 percent poverty level will comply with the mandate. He addressed Representative Trujillo, expressing the Committee's appreciation for her efforts on this bill. He thanked the other presenters.

SUBSTITUTE MOTION ROLL CALL VOTE:

Chairman Heider called for a roll call vote. **Chairman Heider, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock** and **Schmidt** voted Aye. **Vice Chairman Nuxoll** voted nay. The motion carried. **H 535** will be held in Committee.

ADJOURNED: Chairman Heider adjourned the meeting at 4:57 p.m.

Senator Heider
Chair

Linda Hamlet
Secretary

Carol Cornwall
Assistant Secretary