

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 19, 2015

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Martin, Senators Nuxoll, Hagedorn, Tippetts, Lee, Schmidt, and Lacey

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 Senate Health and Welfare Committee (Committee) to order at 3:01 p.m. and welcomed the audience. He introduced Cameron Floyd as the new Senate Page for the first six weeks of the session.

PRESENTATION: **Kendra Witt-Doyle**, MPH, PhD Blue Cross of Idaho Foundation Manager, gave a presentation entitled "High Five! Mt. Everest Challenge." High Five was originally designed as a statewide effort to fight childhood obesity and was the brain child of Tim Olsen. Blue Cross of Idaho decided to expand its effort to include the 2015 Legislature. The kick-off for the challenge will occur on January 21 at the Capitol, and the challenge will take place January 26 – February 27. The 5 week challenge is designed to "climb" Mt. Everest. The Legislators will be able to undertake this climb by tracking physical activity, eating fruits and vegetables and drinking healthy amounts of water. Daily points will be accrued. There will be 3\$5,000 awards given. The winning Legislators are encouraged to donate their prize money to the elementary school of their choice for physical education equipment. The three top awards will go to the "Fastest Climber", "Sherpa Endurance Climber", and "Healthy Eater." There will also be awards given for reaching milestones; for just accepting to take the challenge, the Legislators will be given a pedometer and a lapel pin. More information can be found on the website at HighFiveldaho.org. (see attachment 1).

Vice Chairman Martin asked who would be participating in the challenge. **Ms. Witt-Doyle** replied that this year only the Legislators would be invited to participate. **Senator Nuxoll** asked how to sign up to participate. **Ms. Witt-Doyle** responded that if Legislators were unable to attend the kick-off on January 21, they could do it by email.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Martin for rules review.

Vice Chairman Martin read a brief description of administrative rules and gave an explanation of the role Legislators play in making rules. He indicated that it is the job of elected Idaho Legislators to create laws. However, it is impossible to provide for every situation and outline every detail of how those laws will be carried out. This would turn the State Legislature into a year-round body and greatly increase the size of the Idaho Code. Instead, in Idaho the Legislature creates statutory frameworks for programs and policies. The administrative agency then plans out implementation and writes rules to carry out the Legislature's intent. Idaho provides that the State Legislature would then also review annually the rules that state agencies had created. Idaho Legislature has been reviewing agency rules since

1969. He also thanked Erin, the Committee secretary, and Barbara, his secretary for scheduling the rules being covered.

**DOCKET NO.
16-0210-1401:**

Relating to Idaho Reportable Diseases. Dr. Kathryn Turner, Chief of the Bureau of Communicable Disease Prevention, Division of Public Health, said proposed changes to the Idaho Reportable Diseases Chapter would improve consistency and clarity of language throughout the chapter. This is important for health care providers, laboratories, and others that report diseases as well as the Public Health District staff that investigates those diseases. In addition, changes ensure disease control measures are aligned with current public health best practice. The changes being proposed would improve their ability to protect the public's health throughout the State. **Dr. Turner** requested that the Committee adopt **Docket No. 16-0210-1401**. (see attachment 2)

Senator Tippets indicated that there were some duplications found on pages 23 and 24. **Dr. Turner** agreed that the rule should be on page 24 and would get with the technical department to make that correction.

Senator Tippets asked about children exhibiting symptoms of a disease in a daycare center. The rule states that they cannot attend until the disease is gone. He asked how available the tests are and how long it will take to get the results. **Dr. Turner** responded that The State of Idaho does the testing and it is a 24-48 hour turnaround time. Two negative specimens indicate that the children are no longer contagious. Parents can take their children to their family physician or to a central district health facility for testing. There is no cost to the parents if they use central district health. In the remote areas of Idaho, testing kits will be driven to the area if they are not available.

Senator Tippets had questions regarding transferring sexually transmitted diseases. A discussion was held regarding how far back to go when contacting those who may have been affected by the current carrier. There is no specific time period given in the rule. **Dr. Turner** indicated that each instance is different and needs to be handled on a case by case basis. The current rule gives the flexibility to contact as many or as few people as needed. **Senator Tippets** does not believe that the rule gives the kind of flexibility Dr. Turner sees.

Senator Nuxoll asked what the reasoning was for lowering the level for lead poisoning, and if there were studies indicating the level should be lowered. She was particularly concerned with levels in the Idaho Panhandle area. **Dr. Turner** responded that since 1992 the national standard has been .5. In the Panhandle area it has been .10. In 2013 a survey of 275 children 6 months to 9 years old was taken and approximately 10 children had a level of .5 or above. One child had a .10 level. Lowering the level will make it possible to catch all children who are infected and to educate parents on how to keep them safe.

Senator Nuxoll asked if the children were tested without the parents' consent. **Dr. Turner** indicated that normally lead poisoning is discovered on a regular pediatric or well baby visit. The provider or the lab gets back to the health department when lead poisoning occurs. The health department contacts the doctor and the parents to find the cause and to educate them on lead poisoning. They immediately take steps to find and remove the cause. There is no invasive investigation.

Senator Nuxoll asked what happens to the children when their levels are too high. **Dr. Turner** said it depends on how high. If the level is very high, medication will be given. Steps are taken to remove the problem and a retest is done in about 3 months. Usually by then the level has dropped.

Chairman Heider asked about the reporting time of 1 or 3 days. He also wondered how people determine symptoms. **Dr. Turner** stated that most of the time the reporting dates are based on the impact to the public. Very transmittable diseases need to be caught as soon as possible. Generally, reporting time is based on impact to the public not necessarily the infected person. After symptoms have been diagnosed by a doctor, it is the doctor's responsibility to report the infection to the state agencies. They work together to stop further infection. **Chairman Heider** asked if the Department goes out and finds the people who have come in contact with the infected person. **Dr. Turner** responded that it depends on the disease. The contact group can sometimes be quite large and other times it may only involve immediate family. The scope is very broad and disease detectives are used to help contain the infection.

Senator Schmidt asked if there was a statutory change that prompted the change in the rules. **Dr. Turner** indicated that there was no statutory change. Under the rules the State can determine which diseases need to be reported based on what is happening in Idaho.

Senator Schmidt wondered if there was an additional cost for this increased focus on these types of diseases. **Dr. Turner** responded that the cost is very small because there will only be about 2 reports every 10 years.

Senator Lee said that she has no problem with necrotizing fasciitis being added to the list of diseases. She asked if it was reported before under a different section. **Dr. Turner** said it has been reported before under the term invasive streptococcal infection. The change in reporting is to take out any vagueness so the reporting is more black and white. **Senator Lee** asked if there could be a clarification made on rheumatic fever on the chart on page 34. **Dr. Turner** responded that she will have the technical change made.

MOTION:

Chairman Heider moved that **Docket No. 16-0210-1401** be approved. **Senator Nuxoll** seconded the motion. The motion carried by voice vote. .

**DOCKET NO.
16-0219-1401:**

Food Safety and Sanitation Standards for Food Establishments: Patrick Guzzle, MA, MPH, REHS, Idaho Food Protection Program Manager, Idaho Department of Health and Welfare, stated that he was approached by Jeff Schroeder, Executive Director of Idaho Hunters Feeding the Hungry, and by representatives from the Idaho Food Bank about a rule that would sanction the donation of legally harvested, wild game meat to be donated to the Idaho Food Bank. Currently there are no rules that prohibit or allow said practice. The dilemma was that both parties were willing and open to having such a rule. He worked with Idaho Hunters Feeding the Hungry and the Idaho Food Bank to draft the proposed language for the rule. At a public hearing on October 14, 2014, no opposition to the rule was expressed. Those in attendance were in full support. **Mr. Guzzle** requested that the Committee approve **Docket No. 16-0219-1401**.

Senator Nuxoll stated that she is aware of a problem with donating farm animal meat to the food banks because they must have USDA inspection first, and that isn't possible in many areas. Is there anything that can be done in Idaho to alleviate this problem? **Mr. Patrick** said that beef, poultry, pork, lamb and goats fall under USDA restrictions. Game animals are not in the same classification. Idaho does not have inspection authority. He indicated that if Idaho had any inspection rules in the future, they would have to be at least as stringent as the federal rules.

Senator Hagedorn asked if he had asked the Fish and Game Department to see if they had any problem with it. **Mr. Patrick** indicated that they had helped with the language of the rule.

Senator Schmidt raised a question concerning custom exempt facilities. **Mr. Patrick** explained that those types of facilities are authorized to butcher, but can only return the meat to the original owner. **Senator Schmidt** asked where road-kill applies. **Mr. Patrick** referred back to the term legally harvested and indicated that if the Fish and Game Department deemed the animal legally harvested, it would qualify under the rule. **Senator Lee** questioned the labeling of donated meat and meat that possibly had been in the refrigerator for a number of years and then donated. She asked if one label or two would be required. **Mr. Patrick** responded that one would be enough. The date just signaled to the inspector whether it was used for private use or donated use.

Senator Tippetts asked Mr. Patrick to compare the risk of domestic game versus wild game. **Mr. Patrick** stated that the risk should be relatively low. When customers come to the food bank, they are allowed to choose whether to buy domestic meats or wild game. Information has been provided that if cooking temperatures are over 165 degrees all infections will be eliminated. This is for the protection of both the State and the hunter. (see attachment 3).

MOTION:

Senator Nuxoll moved that **Docket No. 16-0219-1401** be approved. **Senator Schmidt** seconded the motion. The motion carried by voice vote.

**DOCKET NO.
16-0227-1402**

Relating to Idaho Radiation Control Rules: Dr. Christopher Ball, Ph.D., HCLD (HBB), Chief of the Bureau of Laboratories, presented two docket additions. The first is **Docket No. 16-0227-1402**, a chapter rewrite of the Idaho Radiation Control rules, which begins on page 8 of the Pending Fee Rules Review Book. The second, **Docket No. 16-0227-1401** is a repeal of the existing chapter and it is located on pages 58 and 59 of the Pending Rules Review Book. Dr. Ball asked for approval of this docket (see attachment 4).

Senator Tippetts had a question in regard to who pays the fees in relation to the x-ray machines. Is it the owner or the lease holder? **Dr. Ball** indicated that the intent of the rule is for whoever owns and operates the machine to be the person who is required to license it. **Dr. Ball** stated that the person who will be paying the fee is the one who fills out the licenser application on behalf of a facility where the machine is located. **Senator Tippetts** suggested that the rule be rewritten to clarify this definition.

Senator Tippetts questioned the differences in renewal cycles for industrial facilities verses hospitals. **Dr. Ball** said that industrial facilities are usually used for manufacturing. The x-ray machines are completely shielded and greatly reduce the amount of radiation workers are exposed to. The risk of exposure in dental offices is lower than in hospitals. **Senator Tippetts** also requested that the renewal times for fees be more clearly stated in the rule. **Dr. Ball** said he will recommend that the changes be made.

Senator Nuxoll asked if Dr. Ball knew what other kinds of machines were licensed. She also asked what cost is passed on to the consumers. **Dr. Ball** responded that the most common type of licensing was for dental offices and the cost for one machine is \$150 every four years. There are a number of provisions to assist hospitals. One is designed for very large systems such as St. Luke's. A facility will have a radiation control program that monitors the use of these machines. They may choose to pay a \$1,000 fee as long as they send in reports that are developed particularly for the radiation control program. For example, St. Luke's could have a license for the entire facility not each individual clinic. This would result in substantial savings to a very large institution thus minimizing the cost to patients.

Senator Nuxoll asked about the misuse of radiation. **Dr. Ball** said that there are complaints of over exposure but they are very hard to track because the system is paper based. Their department is asking to go to an electronic monitoring system which would make tracking much easier.

Senator Hagedorn expressed concerns about State regulations relating to radiation exposure. He is uncomfortable signing off on something that the Legislature doesn't have control over. There could be a large delta between what they see, and who actually has the documents in their possession. He asked **Dr. Ball** what the procedure would be for his organization to present the necessary information to the Legislature. **Dr. Ball** indicated that they would work out a mutual plan for relaying information. He stated that their agency would certainly monitor changes to make sure that they were appropriate for inclusion or exclusion in the rules. His agency would be open to doing whatever the Legislature asked to make them comfortable with signing off on the rules.

Chairman Heider asked **Dr. Ball's** opinion on licensing radiologists (which Idaho has resisted doing up to this point) versus licensing the machines those same radiologists use. **Dr. Ball** responded that they aren't mandated to personnel operating the machines, only the machines themselves. They are concerned with ensuring that the devices are operating properly to obtain minimal risk to users.

Chairman Heider asked **Dr. Ball** what his opinion was on whether the State should be moving toward licensing the operator of the x-ray machines. **Dr. Ball** said that speaking for himself, and not the Department of Health and Welfare (Department), there could be advantages to licensing operators; but at what cost? Part of the accreditation process requires operators to meet certain criteria. His major concern is for rural areas where small, but very needed, dental offices can't afford more cost above the cost of the machine itself. There is probably a need for more evaluation concerning this subject.

Senator Schmidt referenced page 14 § 5304, which refers to operator qualifications having an "acceptable amount of training." In the rural areas, who would approve the acceptable amount of training? **Dr. Ball** said the assumption is made that the dentist, through his training, has the appropriate qualifications to provide adequate training and to document the practices he uses for risk management in his own facility. **Senator Schmidt** asked how this would be handled if the machine is leased or if the business was run by a large corporation. **Dr. Ball** indicated that the owner/operator is in charge of the x-ray device and is the one determining what protocols, procedures, and training is in place to meet the requirements. Documentation of the training would be provided when on-site checks are made.

Senator Hagedorn questioned the fiscal note on page 3 relating to the proposed increase in licensure fees to the Department by approximately \$72,000. He asked what the Department receives in fees currently. **Dr. Ball** stated that they receive none. Their funding comes from two sources, the General Fund and a contract with Federal Drug Administration. Such contract is for inspection of mammography devices to ensure that they comply with quality standards of the statutory mandate. By moving to a one time registration fee, it would enable their department to make sure all licensing and records are current.

Senator Hagedorn questioned what percentage of their budget the \$72,100 would equate to. **Dr. Ball** answered by explaining their funding structure in 2014. Total expenditures were \$172,300. Seventy-four percent of that came from the General Fund and \$45,000 came from the contract with the FDA. Expenditures were allocated and 94 percent went to personnel costs, and the operating budget was 6 percent of the \$172,300. They are anticipating that the change of going to this one time registration process is going to increase their operating expenses while personnel expenses will stay very similar. One of the things they have tried to do is

roll out their licensure process in cycles so that they can do an on-site investigation or remote investigation of all of the x-ray devices within the renewal period of that licensure. They are anticipating that the people signing up and paying their fees will see some value to the license fees they are being assessed. This will increase infrastructure costs. They are also looking for a way to continue following up with the pilot project used in dental offices using a remote program done through the mail. A stable funding source will allow support for ongoing costs and the remote evaluation process. This will ensure that all of the x-ray devices are functioning properly.

Senator Schmidt stated that he was impressed with Dr. Ball's testimony and appreciates that his Department is willing to be accountable for this system.

Senator Nuxoll has an issue with licensing a machine and added cost to the customer. She does not approve of the rule.

Senator Hagedorn also has an issue with approving a rule without having knowledge of what is in the documents and not having control over them. He does not approve the rule.

Senator Tippets asked Dr. Ball what the consequences were of rejection of this rule. **Dr. Ball** stated that if this rule is not approved he would ask that **Docket No. 16-0227-1401** be not approved as well. His biggest concern is that the current system isn't compliant with the statutory mandates.

Senator Tippets made the comment that he has worked with these types of machines and they require trained persons and documented facilities. He disagrees with Senator Nuxoll's statement of non-approval and understands Senator Hagedorn's point of view regarding control. He expressed that many people don't have the expertise to understand all of the rules and regulations concerning x-ray machines and feels that the Committee has to trust the experts. For that reason, he supports this rule.

MOTION: **Vice Chairman Martin** asked the Secretary to take the roll call vote. **Senators Heider, Martin, Tippets, Lee, Schmidt** voted aye. **Senators Nuxoll, Hagedorn** voted nay. Roll call is 5 ayes and 2 nay votes. **Docket No. 16-0227-1402** has passed the Committee.

Docket No. 16-0227-1401: **Vice Chairman Martin** asked Dr. Ball to proceed with **Docket No. 16-0227-1401**. **Senator Schmidt** requested for motion.

MOTION: **Vice Chairman Martin** asked for a vote on **Docket No. 16-0227-1401**. **Senator Schmidt** moved to approve **Docket 16-0227-1401**. **Senator Tippets** seconded the motion. Voice vote carried the motion and **Docket 16-0227-1401** passed the Committee. **Vice Chairman Martin** thanked Dr. Ball for his testimony.

DOCKET NO: 16-0301-1401: **Eligibility for Health Care Assistance for Families and Children: Camille Schiller**, Program Manager for Medicaid Eligibility in the Department of Health and Welfare, Division of Welfare, stated that this docket covers three items that are needed for clarification when determining eligibility for the Medicaid program and to align with federal regulations. The first item revises the definition for parents/caretaker relatives to read "child" instead of "dependent child." The second item describes parents' and caretaker relatives' Medicaid coverage. The word "adult" is being changed to "individual" to allow for parents who may still be minors to receive Medicaid under the parent eligibility group. The final item concerns the eligibility period for individuals determined presumptively eligible by qualified hospitals. **Ms. Schiller** asked to have this rule approved. (see attachment 5).

MOTION: **Chairman Heider** moved for approval of **Docket No. 16-0301-1401.. Senator Schmidt** seconded the motion. Motion passed by the Committee.

DOCKET NO: 16-0305-1401: **Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD): Camille Schiller**, Program Manager for Medicaid Eligibility in the Department of Health and Welfare, Division of Welfare, stated that this docket covers two changes being requested for individuals receiving Nursing Home Assistance or Home and Community Based Services through Medicaid and their financial responsibility referred to as their "Share of Cost." The first request is to add to the list of allowable deductions that can be made to the customer's share of cost calculation. There is no fiscal impact to the General Fund. The second change is in regards to patients who enter the nursing home and seek Medicaid coverage to help pay for these expenses. The annual fiscal impact for this change is a total of \$161,058 of State funding. **Ms. Schiller** asked to have this rule approved. (see attachment 6).

Senator Hagedorn asked about partial month payments. **Ms. Schiller** stated that the way the rule is currently written they would not be responsible for their share during a partial month.

Senator Schmidt indicated that the rule doesn't read well as to whom and when benefits will be paid. **Ms. Schiller** clarified that benefits are only paid to the person living in the home. She indicated that the wording would be changed to accommodate the new rule for cost billing thereby clarifying the statement.

Senator Schmidt asked about clarity on when patients actually begin receiving benefits. **Ms. Schiller** said that to receive benefits patients have to actually be living in the long term care facility, and their shared cost benefits would kick in after they had been there for a number of months. **Senator Schmidt** suggested that the wording state that the benefits are received while they are living in the long term care facility.

Senator Lee asked if there were other benefits patients receive when they live in a long term care facility that are not inclusive of them residing there. **Ms. Schiller** replied that these are basic Medicaid payments that the Department is paying.

VOICE VOTE: **Senator Schmidt** said he would approve this docket with the edit discussed earlier. Motion seconded by **Chairman Heider**. **Docket No. 16-0305-1401** passed by voice vote.

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

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 4:56 p.m.

Senator Heider
Chair

Erin Denker
Secretary

Sharon Pennington
Assistant Secretary