

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Thursday, January 22, 2015  
**TIME:** 3:00 P.M.  
**PLACE:** Room WW54  
**MEMBERS PRESENT:** Chairman Heider, Vice Chairman Martin, Senators Hagedorn, Lacey, Lee, Nuxoll, Schmidt and Tippetts  
**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 2:59 p.m. He welcomed everyone and let them know the Committee was on rules and would continue rules next week.  
**PASSED THE GAVEL:** Chairman Heider passed the gavel to Vice Chairman Martin.  
**DOCKET NO. 16-0507-1401** **Lori Stiles**, Investigations Supervisor for the Department of Health and Welfare (DHW), Medicaid Program Integrity Unit (Unit) of the Bureau of Audits and Investigations (Bureau), presented **Docket No. 16-0507-1401**, The Investigation and Enforcement of Fraud, Abuse, and Misconduct.

**Ms. Stiles** said their staff audited Medicaid providers to ensure they were complying with Medicaid rules and regulations. Last fiscal year they completed 262 audits, identified \$3.2 million in overpayments and penalties, and recovered nearly \$2.7 million. This docket would add a new section of rules to cover reinstatement procedures for individuals or entities that have been excluded from Idaho's Medicaid program. The rule provides the conditions, a timeline for submitting an application, how to request, and where to return the required documents. If an individual or entity was denied reinstatement, they can reapply a year after the date the denial decision was final. Section 300 of the rules was amended to add reinstatements as an action that required notification to the Office of the Inspector General (OIG). A negotiated rulemaking meeting was held July 10, 2014, in Boise, Idaho. No one attended and no written comments were received. This rule had no anticipated fiscal impact.

**Ms. Stiles** asked the Committee to approve **Docket No. 16-0507-1401**.

**Senator Schmidt** asked why no time frame was given for DHW to issue a written decision granting or denying requests. **Ms. Stiles** replied they intentionally kept the time frames out of this rule because there was a time frame to respond in the Unit's policies and procedures. No one had requested reinstatement yet, so they had not been able to go through the entire process.

**Senator Nuxoll** asked Ms. Stiles to explain Sections h. and 02, on page 173. **Ms. Stiles** responded when a provider, individual, or institution was excluded from the Medicaid program, if they continued to work as an employee or contractor for anyone that was receiving Medicaid funds while they were excluded, they would not be reinstated because they did not comply with the exclusion. **Ms. Stiles** further responded that an individual or institution was allowed to apply for reinstatement approximately four months before the end of the exclusion period because there

was a time lapse between the time they filled out the application and when the Board met to decide whether to approve or deny. It gave applicants an opportunity to start near the time their exclusion period was ending. **Senator Nuxoll** asked where the \$2.7 million in overpayments and penalties went. **Ms. Stiles** replied a portion helped fund the Medicaid Program Integrity Unit, a portion paid the federal share of the overpayments, and the majority went into the General Fund.

**Vice Chairman Martin** asked Ms. Stiles to explain the comment that no one had requested reinstatement. **Ms. Stiles** responded because federal exclusion requirements gave providers an opportunity to be reinstated through the OIG, providers had not been going through a reinstatement process with the State. They could start providing Medicaid services without the State's approval, so DHW produced a policy and procedure for reinstatement and put it in the Medicaid newsletter in June 2013. This docket would put it in the rules.

**MOTION:** **Senator Lacey** moved to approve **Docket No. 16-0507-1401**. **Vice Chairman Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 16-0506-1401** **Fernando Castro**, Supervisor for the Criminal History Unit (Unit) of the Bureau of Audits and Investigations (Bureau) presented **Docket No. 16-0506-1401**, Criminal History and Background Checks.

**Mr. Castro** reported the Unit had completed nearly 23,000 background checks every year. He said the Unit screened employees of providers and individuals that participated in DHW programs such as foster care, adoption, and certified family homes. Each year, approximately 300 applicants are either denied or voluntarily withdraw because of disqualifying elements in their background checks. **Mr. Castro** explained the rule change incorporated several adjustments that supported other DHW rule changes which repealed, added, or changed background check requirements for certain classes of individuals.

DHW did not hold formal negotiated rulemaking meetings with their stakeholders for this docket because it was not feasible to conduct such meetings in time to have temporary rules in place to meet legislative intent and the statutory requirements that changed those rules themselves. However, they actively and constantly listened to their stakeholders' concerns through other mediums such as customer service surveys, quarterly newsletters, direct feedback to the Unit, and by including them in the development of their website. He explained the proposed changes and gave references to where those changes were in the docket.

**Senator Nuxoll** asked if some of the changes were made due to DHW's discretion. **Mr. Castro** responded he did not believe so. When any background check rules were changed, they had to change this one to support that requirement. **Senator Nuxoll** asked if that was also true about the rule they deleted. **Mr. Castro** replied it was not at the discretion of DHW as far as he understood. It was an attempt to keep the language concurrent in both communications. **Senator Nuxoll** said on page 23, it says the employer must print the clearance within 14 days of the clearance being accessible on DHW's website. She asked if that was enough time. **Mr. Castro** responded DHW felt it was enough time because the system sent an automatic notice to an employer as soon as their candidate was cleared. They found employers would view the email without opening and reading the attached background record. This change was an effort to tell employers to open the report to look at what was found. **Senator Nuxoll** inquired about the change in 300.02.B on page 24. **Mr. Castro** said the background check system allowed for one background check to be used across several parts of the industry. In order to view the results and see who was available for an interview, an employer had to attach themselves to the person in the system. This rule change told employers to

make sure they attached themselves to the candidate of their choice in the system.

**Senator Hagedorn** commented on page 23, Section 140.01, where the language was deleted that a fee may be assessed when an individual missed a scheduled appointment. He said it spoke very well of Mr. Castro and DHW for following up on a Committee recommendation to take that action.

**MOTION:** **Senator Hagedorn** moved to approve **Docket No. 16-0506-1401**. **Senator Nuxoll** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 16-0601-1401** **Falen LeBlanc**, Program Specialist, Division of Family and Community Services (Division), DHW, presented **Docket No. 16-0601-1401**. She described the Chafee Foster Care Independence Program Act which was passed by Congress in 1999 to provide services to promote a more successful transition to adulthood for older youth leaving foster care.

**Ms. LeBlanc** reported DHW made payments for driver's training, permit, and license for a child in their legal custody when it was part of the child's Independent Living Plan. This rule change would allow the DHW to reimburse a licensed foster parent for the cost of vehicle insurance for the foster child. **Ms. LeBlanc** said the changes would improve recruitment and retention of foster parents, increase placement options for older youth, and encourage life skills and normalization of eligible foster children by allowing them to become drivers while in foster care where they had family support and direction. Costs would be paid from the existing Chafee Independent Living appropriation. Approximately 100 foster children would be able to access the reimbursement for an estimated maximum annual cost of \$132,000. Negotiated rulemaking was not conducted since this docket conferred a benefit.

**Senator Nuxoll** asked when the Division would have the authority to decide to do something like this and use more money. **Ms. LeBlanc** said the funding was specific to the foster youth population. The Division would offer vehicle insurance reimbursement one-on-one with the foster parents and the young person in foster care when the young person was ready to drive. It would be in addition to the ongoing life skills training DHW already provided. **Senator Nuxoll** asked how they would get the authority to use these funds even though the Finance Committee did not give them the authority to use the funds. **Ms. LeBlanc** deferred to Dave Taylor, Deputy Director, DHW. **Mr. Taylor** said DHW had a reprioritization of their current appropriation and it would not incur additional costs. The benefit would only be offered as funds were available.

**Senator Hagedorn** asked how many older children were in the foster care program in Idaho. **Ms. LeBlanc** replied 269 people between the ages of 15 and 18 were in foster care in the Independent Living Program. They had 1,259 young people total in foster care.

**Senator Lee** asked how many foster children would still be in foster care at age 21 and if this rule change would apply to people in foster care past the age of 18. **Ms. LeBlanc** responded this rule would only apply to the 15- to 18-year-olds who were currently in foster care. Once they turned 18 they would be able to insure themselves. There was a voluntary program for that which was very specific.

**MOTION:** **Senator Nuxoll** moved to approve **Docket No. 16-0601-1401**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
16-0733-1401**

**Casey Moyer**, Program Manager, Division of Behavioral Health, DHW, presented **Docket No. 16-0733-1401** regarding Adult Mental Health (AMH).

**Mr. Moyer** explained the Division of Behavioral Health's AMH program statutorily mandated populations and prioritization methods. He said an update was needed so the rules would reflect the changing environment and best practices to include reference to the Diagnostics and Statistics Manual Fifth Edition, improve efficiency and access through an ongoing quality assurance process, update terminology, and reflect non-customer internal program process changes. A new subsection addressed consumers' rights and responsibilities related to participation in treatment and affirmed the clients' rights to humane treatment, choice and access while they were a part of the AMH program. **Mr. Moyer** stated there was no negotiated rulemaking because these rules were program and staff operational policies. He said there would be no adverse financial impact to the program or ability to meet statutory obligations. Approval of these rules would help DHW improve the quality of care.

**Senator Tippetts** asked Mr. Moyer to deliver the message to DHW that the Committee would like to see negotiated rulemaking. **Senator Tippetts** also asked that the wording on item i., page 189, be changed from requiring the client or legal guardian to sign the treatment plan to say DHW would attempt to get the signatures on treatment plans. **Mr. Moyer** responded signatures were a means to verify that the client was involved in the treatment plan, and if a client was unable to sign there were alternate documentation mechanisms for the lack of signature.

**Senator Tippetts** asked Mr. Moyer to explain why treatment plan renewals were required every 12 months. **Mr. Moyer** replied treatment plans were required to determine if treatments were effective and utilizing the right resources. The 12-month requirement was the minimum.

**Senator Nuxoll** asked if 120-day treatment plan reviews were different than annual treatment plan renewals. **Mr. Moyer** replied yes; reviews and renewals often took place simultaneously because changes may be needed to a treatment plan as a result of a review. **Senator Nuxoll** asserted that negotiated rulemaking is very important in order to make a judgment on rule changes based on whether anyone had problems with the change.

**Senator Heider** asked if Optum was a subcontractor to the contract. **Mr. Moyer** replied Optum Idaho was separate from the AMH program operated by the Division of Behavioral Health. Optum operated under Medicaid rules.

**MOTION:**

**Senator Hagedorn** moved to approve **Docket No. 16-0733-1401**. **Senator Tippetts** seconded the motion. **Senator Nuxoll** asked to be recorded as voting nay. The motion carried by **voice vote**.

**DOCKET NO.  
23-0101-1401**

**Sandra Evans**, Executive Director, Idaho Board of Nursing, presented **Docket No. 23-0101-1401**, Pending Rules of the Board of Nursing.

**Ms. Evans** reported the 2014 Legislature amended the Board of Nursing's statute to include as grounds for discipline, sexual conduct or sexual exploitation by a nurse of a current or, in certain situations, a former patient. She said **Docket No. 23-0101-1401** provides clarity to the statutory provisions by identifying what constitutes prohibited conduct by a nurse, defining terms, and otherwise implementing provisions of the law. Public notice of the intent to promulgate rules and negotiated rulemaking was published on June 4, 2014. Written and oral comments were received during a public meeting held on July 17 and during the prescribed comment period. Comments received were in support of the proposed

rule. **Ms. Evans** said there would be no fiscal impact resulting from implementation of this rule.

**Senator Tippets** said he had expected these rules to be very difficult to write and congratulated the Board of Nursing for getting it right and doing a good job.

**MOTION:** **Senator Heider** moved to approve **Docket No. 23-0101-1401**. **Senator Schmidt** seconded the motion. The motion carried 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 4:05 p.m.

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Senator Heider  
Chair

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Erin Denker  
Secretary

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Paula Tonkin  
Assistant Secretary