

MINUTES
HOUSE HEALTH & WELFARE COMMITTEE

DATE: Monday, January 25, 2016

TIME: 9:00 A.M.

PLACE: Room EW20

MEMBERS: Chairman Wood, Vice Chairman Packer, Representatives Hixon, Perry, Romrell, Vander Woude, Beyeler, Redman, Troy, Rusche (Van Tassel), Chew (Wallace)

**ABSENT/
EXCUSED:** None

GUESTS: The sign-in sheet will be retained in the committee secretary's office until the end of the session. Following the end of the session, the sign in sheet will be filed with the minutes in the Legislative Library.

Chairman Wood called the meeting to order at 9:00 a.m.

DOCKET NO. 16-0201-1401: **Bill Morgan** Idaho Time Sensitive Emergency (TSE) Council, presented **Docket No. 16-0201-1401**, which updates the existing Rules to specify individuals who must not talk to trauma centers, unless the TSE Council intervenes. Answering a question, Dr. Morgan said surveyors calling hospitals directly could adversely impact results.

MOTION: **Rep. Redman** made a motion to approve **Docket No. 16-0201-1401**.

For the record, no one indicated their desire to testify.

VOTE ON MOTION: **Chairman Wood** called for a vote on the motion to approve **Docket No. 16-0201-1401**. **Motion carried by voice vote.**

DOCKET NO. 16-0309-1501: **Matt Wimmer**, Deputy Administrator of Policy, Division of Medicaid, presented **Docket No. 16-0309-1501**. The Rule changes reduce provider administrative burden, clarify service and supervision requirements, and ensure appropriate delivery of physical, occupational, speech therapy, and school-based services. Allowance is made for telehealth service delivery. The effective date is July 1st, 2016. Answering a committee question, Mr. Wimmer said the Social Security Act's (SSA), which directs Medicaid benefits, requirement for a physician order is an issue in rural areas and continues to be addressed.

Lisa Hettinger, Division Administrator, Medicaid, was invited to answer a committee question. She stated the physician signature as indicated in these Rules applies only to the Medicaid applicable parts of the Individual Education Plan (IEP).

Tammy Emerson, State Advocate for Reimbursement, Idaho Speech and Hearing Association (ISHA), Chair and Member, American Speech and Hearing Association (ASHA) Committee on Medicaid, introduced **Marcia Williams**, Past President, ASHA, and testified **in support** of **Docket No. 16-0309-1501**. In answer to a previous committee question, Ms. Emerson stated Medicaid eligibility requires annual physician visits. Faxes can be used to send and return plans for approval.

Ms. Williams clarified that all IEP services are provided, with or without Medicaid coverage.

Further testifying, **Ms. Emerson** said prior to Medicaid reimbursement a physician signature was not required. The proposed Medicaid billing requirement clarifies, within the school-based rules, adherence to the Medicaid therapy rule. The direct supervision of paraprofessionals change clarifies for Speech Language Pathologists (SLPs) what is required in the schools. Use of teletherapy will address the lack of SLPs in rural areas.

Karen Echeverria, Executive Director, Idaho School Board Association, testified **in opposition** to **Section 733.01.a** of **Docket No. 16-0309-1501**, stating the physician stipulation does not provide for practitioners of the healing arts, which other states allow. Approximately \$10 to \$40 million is left unbilled because rural school districts face difficulty with this requirement and end up not billing for Medicaid services. Responding to a committee question, Ms. Echeverria said the Board would be open to inclusion of a restricted practitioners of the healing arts list.

Rob Winslow, Executive Director, Idaho Association of School Administrators, Representative, Idaho Association of Special Education Administrators, testified **in opposition** to **Section 733.01.a** of **Docket No. 16-0309-1501**, because the physician's order does not recognize the Individual Education Plan (IEP) team authority. Answering committee questions, Mr. Winslow explained rural area difficulties in obtaining timely signatures would be addressed by inclusion of the IEP team members in the approval list.

Kindel Mason, Special Education Director, Jerome, testified **in opposition** to **Section 733.01.a** of **Docket No. 16-0309-1501**. The Individuals with Disabilities Education Act (IDEA) requires an IEP with or without Medicaid benefits. The IEP team works daily with the child to determine the appropriate plan. The physician sees the child annually, is not attending the IEP meetings, is not active within the IEP team, and does not witness the child performing at the school level. The sixty-day assessment window may not be met because the physician referral fax has not been returned. The child begins receiving billed services immediately, with or without the physician order. The physician must also approve any IEP changes. He recounted the district's past contracted physician use, now an agency contract at a cost of \$6,000 a year. Someone working with the child on a daily basis would make more sense. Due to possible audit penalties, he has one full and one part-time staff person to review Medicaid paperwork.

Responding to committee questions, **Mr. Mason** said the Department of Education has used one person for statewide training and online training is also available. Although there were no civil penalties in their first audit, they paid approximately \$18,000 for mistakes. When their contractor was audited they had to pay an additional \$1,000 in civil penalties. A blank IEP consists of about twenty pages, so it is easy for the wrong box to be checked. If a therapist does not read a revised IEP, overbilling can occur, and incorrect services may be provided.

Kelly Hall, Special Education Supervisor, Boise School District, testified the District is **in support** of most of **Docket No. 16-0309-1501** and wanted to draw attention to their cost concerns. Annual costs to obtain Medicaid are approximately \$20,000, excluding processing and filing expenses. Special education teacher certification to provide psychosocial services costs approximately \$5,000 each year. Inclusion of special education teachers, who are already fully qualified, in the exempt provider list would remove the reimbursement barrier. Other teacher expenditures include costs not typically incurred for clinical competence beyond district requirements. A work group has been formed to address these issues.

In answer to committee questions, **Ms. Hall** explained their nurse practitioner oversees all district health services and provides district referrals. They utilize two and a half staff members to process Medicaid claims, which then go through Molina.

Cindy Levesque, Registered Nurse, School District Consultant, testified in **opposition to Section 733.01.a.i, II, and III, Docket No. 16-0309-1501**. Previously, the school districts followed only IDEA rules and guidelines. If not academically impacting a child's education, the services were not provided. IEP services begin immediately and can lead to unclaimed dollars when a physician referral is delayed. The physician cannot change the IEP team's decision. Wording restrictions and other requirements hinder school district claim submissions.

Allison Walters, Parent, President, Autism Society of Treasure Valley, testified in **opposition to Section 733.01.a of Docket No. 16-0309-1501**, requesting addition of the IEP team members to the list of approved physician order signatories. The IEP team members are very skilled at selecting the appropriate services and she trusts them to make the best decisions for her child. Parents are excellent auditors and keep the teams accountable. This Rule change forces the school districts to absorb costs until the physician signs the order, which may be delayed or not signed at all. This is money from the state budget instead of federal funds.

Ms. Walters said, responding to committee questions, a nurse practitioner signs her son's orders. They decided to use his outside Medicaid developmental disabilities (DD) funds for behavioral services due, in part, to his IEP. He has never met the district's nurse practitioner and has an annual wellness checkup with his physician.

For the record, no one else indicated their desire to testify.

Lisa Hettinger, invited to answer committee questions, stated the rejection of **Section 733.01.a** would remove the payment ability of all providers. She proposed a continued commitment to expand the definition within regulations for a future Rule change. The school-based providers also provide services within the community and the same quality is expected. Parents expressed concern regarding the Health Insurance Portability and Accounting Act (HIPAA) coverage of school-based services.

Mr. Wimmer answered the question further, saying privacy issues are addressed through HIPAA in the medical field and Family Educational Rights and Privacy Act (FERPA) in the educational system.

Lisa Hettinger was asked to answer more committee questions. She said the signature requirement complies with Code of Federal Regulations (CFR) and limits abuse opportunities. The schools do not have to bill Medicaid. Without this Rule, there is no longer an enforceable piece payable within Medicaid. Along with school based services, the Rule covers community practitioners, so elimination of **Section 733.01.a** would eliminate anyone's Medicaid collection ability.

MOTION:

Rep. Perry made a motion to reject **Docket No. 16-0309-1501**.

Speaking to the motion, **Rep. Perry** said this approach leaves the program in place and allows the work group further discussion of the physician definition, billing reluctance, and other issues.

SUBSTITUTE MOTION:

Rep. Hixon made a substitute motion to approve **Docket No. 16-0309-1501**.

Rep. Hixon, speaking to the motion, stated the Rule has other changes beyond **Section 733.01.a**. He agreed further discussions could broaden the physician definition.

AMENDED SUBSTITUTE MOTION:

Vice Chairman Packer made a motion to approve **Docket No. 16-0309-1501**, with the exception of **733.01.a**.

Commenting on the motion, **Vice Chairman Packer** said the task force efforts demonstrated in other parts of the Rule need to remain intact, although this section does not work.

Rep. Redman commented **in support** of the original motion because the work has not been satisfactory.

Rep. Troy, in support of the amended substitute motion, commented the Rule process, while thorough, has left out the rural voice, a large population that must be heard.

Rep. Vander Woude commented **in support** of the original motion, which will keep the original Rule in effect. The change requires a pivotal signature from someone not involved in the child's IEP, let alone the child. A person signing off without knowledge of the situation is a case for fraud.

Rep Wallace, in support of the substitute motion, stated the new and old wording in **Section 733.I.a** are in harmony.

Rep. Van Tassel, in support of the substitute motion, expressed concern that federal law requires the physician signature and payments for services need to happen.

Chairman Wood, in support of the substitute motion, commented physicians who delay or do not sign a health plan show a lack of interest in the children and need to be replaced by the families. Physicians need to be aware of what is happening in both the homes and schools. Beyond this section, no one has indicated a conflict with the Rule.

**VOTE ON
AMENDED
SUBSTITUTE
MOTION:**

Chairman Wood called for a vote on the amended substitute motion to approve **Docket No. 16-0309-1501**, with the exception of **Section 733.01.a**. **By a show of hands, the motion failed.**

**VOTE ON
SUBSTITUTE
MOTION:**

Chairman Wood called for a vote on the substitute motion to approve **Docket No. 16-0309-1501**. **By a show of hands, the motion carried.**

Responding to a request, **Lisa Hettinger** gave assurance the task force will work out the concerns addressed in today's testimony. She will provide to the committee both the CFR applicable section and the healing arts defined members list.

Due to time constraints, **Chairman Wood** stated the remaining agenda items will be carried over to a later date.

ADJOURN:

There being no further business to come before the committee, the meeting was adjourned at 11:14 a.m.

Representative Wood
Chair

Irene Moore
Secretary