

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Monday, February 01, 2016

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Martin, Lee, Harris, Schmidt and Jordan

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** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:12 p.m.

INTRODUCTIONS: **Chairman Heider** recognized in attendance: Neva Santos, Executive Director of the Idaho Academy of Family Physicians and second-year residents from the Family Medicine Residency of Idaho. **Chairman Heider** and **Senator Hagedorn** invited the residents to introduce themselves and tell the Committee the percentage of interest on their respective student loans. **Jaclyn Cooperrider** stated she has approximately \$250,000 of medical school debt at 6 percent interest. **Chairman Heider** asked whether all of the residents in attendance were in similar situations. Those that responded confirmed that they were similarly situated. **Chairman Heider** and **Senator Hagedorn** thanked the resident for sharing this information and noted that they admired the work the residents were doing.

PASSED THE GAVEL: Chairman Heider passed the gavel to Vice Chairman Nuxoll to conduct the rules review.

DOCKET NO. 16-0316-1501 **Rules of the Department of Health and Welfare related to Premium Assistance.** **Tiffany Kinzler**, Bureau Chief of the Bureau of Medical Care for the Division of Medicaid in the Department of Health and Welfare (Department), presented this docket.

Ms. Kinzler stated that this docket repeals the chapter of rules for the premium assistance program. This program, which is no longer funded, was run as a demonstration project between July 2004 and September 2014. This chapter of rules defined how Idaho provided premium assistance for (i) children eligible for the State's Children's Health Insurance Program and (ii) parent and childless adults under 185% of the federal poverty level. **Ms. Kinzler** stated that the docket did not go through the negotiated rulemaking process because it repeals a chapter of rules for which federal and state authority no longer exists.

MOTION: There being no questions, **Senator Schmidt** moved to approve **Docket No. 16-0316-1501**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1503 **Rules of the Department of Health and Welfare Related to Medicaid Basic Plan Benefits and Third Party Liability Exceptions.** **Sheila Pugatch**, Bureau Chief of the Bureau of Financial Operations for the Division of Medicaid in the Department, presented this docket.

Ms. Pugatch stated that these pending changes will align Idaho rules with recent modifications to federal statutes regarding third party liability. Federal regulations require providers to bill all known third parties with liability before submitting a claim to Medicaid. A liable third party is typically any insurance company, private individual, corporation or business that can be held legally responsible for the payment of all or part of the costs attributed to a Medicaid member. **Ms. Pugatch** stated that the pending rule does contain exceptions for specific situations when a provider may bill Medicaid before other third party payers. **Ms. Pugatch** noted that no comments to these rules were received.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Vice Chairman Nuxoll asked why prenatal and preventive pediatric care services were excluded from the requirement that providers of such services bill third parties before Medicaid. **Ms. Pugatch** responded that these services were excepted from the requirement because the Division of Medicaid wanted to ensure that these services are rendered in a timely fashion.

MOTION:

There being no more questions, **Senator Harris** moved to approve **Docket No. 16-0309-1503**. **Senator Jordan** seconded the motion. The motion carried by voice vote.

**DOCKET NO.
16-0309-1502**

Rules of the Department of Health and Welfare Related to Medicaid Basic Plan Benefits and Patient Centered Medical Home Program Changes. **Matt Wimmer**, Deputy Administrator for Policy for the Division of Medicaid in the Department, presented this docket.

Mr. Wimmer stated that these pending rules would allow the Division of Medicaid to pay primary care providers for delivering better health care rather than solely for delivering services. In 2014, the Governor established the Idaho Health Care Coalition and charged the coalition with developing an integrated, coordinated health care system with a focus on improved population health, improved individual health outcomes and greater cost efficiencies; these rule changes are a result of those efforts. **Mr. Wimmer** reported that the Division of Medicaid conducted extensive negotiated rulemaking for this docket. The Division of Medicaid engaged many stakeholders and provided opportunities for comment at hearings conducted across Idaho.

Mr. Wimmer stated that, in addition to supporting increased reimbursement to primary care providers who positively impact patients health, these pending rules (i) support the use of telemedicine to enable patient in rural areas to access care and (ii) set conditions and boundaries around the provision of care to avoid misuse of services. **Mr. Wimmer** reported that these pending rules are expected to result in a net cost savings to the State.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Vice Chairman Nuxoll asked why certain changes were single underlined, while other changes were double underlined. **Mr. Wimmer** answered that the single underlined changes were changes proposed by the Division and double underlined changes were changes made in response to comments received.

Referencing the changes to the "Healthy Connections" provisions, **Senator Jordan** asked whether family planning services were still covered under the program. **Mr. Wimmer** confirmed that family planning services were still covered by the program; the rule changes moved the referral requirements for such services from the rules to the Idaho Medicaid Provider Handbook.

Regarding the Idaho Medicaid Provider Handbook, **Senator Hagedorn** asked how often the handbook is updated and whether or not the handbook promotes the provision of telehealth services. **Mr. Wimmer** responded that the handbook is continually updated and takes a neutral position regarding the provision of telehealth services. **Mr. Wimmer** noted that the decision to use telehealth services is left to the provider and patient. **Senator Hagedorn** asked whether there are payment incentives to encourage physicians to provide telehealth services to patients in rural Idaho. **Mr. Wimmer** reported that Medicaid currently reimburses telehealth services and office services at the same rate; some insurers reimburse telehealth services at a lower rate.

Senator Schmidt asked Mr. Wimmer to clarify what "twenty-four hour, seven days per week access to an on-call medical professional" entails. **Mr. Wimmer** responded that clinics must provide telephonic access to on-call professionals. However, **Mr. Wimmer** indicated that he was unsure whether such professionals would be staffed in Idaho or out-of-state.

Senator Martin asked Mr. Wimmer if there was data regarding telehealth usage in Idaho. **Mr. Wimmer** noted that for Medicaid historically had little telehealth usage. **Senator Martin** asked why usage was so low. **Mr. Wimmer** responded that prior to the passage of the Telehealth Access Act in 2015, there was ambiguity as to whether telehealth was an acceptable practice for physicians. With the passage of the Telehealth Access Act, Medicaid and commercial providers in Idaho are moving forward with greater coverage of telehealth services.

Vice Chairman Nuxoll asked why punitive measures are taken when services are provided without a referral. **Mr. Wimmer** responded that the requirements for referrals are a long-standing practice. The purpose of referral requirements is to foster good care coordination between primary care providers and the patients that they serve. In some circumstances, the Division of Medicaid has removed referral requirements and replaced them with communication requirements.

Referencing provisions related to provider qualifications and duties, **Senator Schmidt** asked whether the Division of Medicaid should require certain permissive services such as the reporting of clinical data to the Department of Health and Welfare. **Mr. Wimmer** stated that some of these permissive services will be required in the future; the services are permissive at this time because providers are currently at different levels of readiness to provide these services.

Vice Chairman Nuxoll requested that references to federal codes should be dated.

MOTION:

There being no more questions, **Senator Schmidt** moved to approve **Docket No. 16-0309-1502**. **Senator Lodge** seconded the motion. The motion carried by voice vote.

**DOCKET NO.
16-0309-1501**

Rules of the Department of Health and Welfare Related to Medicaid Basic Plan Benefits to Update and Align School-Based and Therapy Services. **Matt Wimmer**, Deputy Administrator for Policy for the Division of Medicaid in the Department, presented this docket.

Mr. Wimmer stated that the purpose of this docket is to reduce administrative burden for providers, clarify requirements for services and ensure appropriate delivery of physical, occupational and speech therapy and school based services. School based services are benefits delivered by qualified school staff in the school for children whose special needs qualify them for specific Medicaid benefits. For services to be covered by Medicaid, the child's needs must meet medical necessity criteria outlined in IDAPA and be identified in an individualized education plan (IEP). **Mr. Wimmer** reported that the department conducted negotiated rulemaking sessions and worked extensively with both school and therapy providers to develop these rules. He noted that the Division of Medicaid received numerous comments and responded with significant revisions to meet most but not all of the concerns expressed.

Mr. Wimmer stated that, when the docket was presented to the House Health and Welfare Committee, the Division of Medicaid heard concerns from several providers regarding section 733.01.a related to the physician order requirements for therapy services. **Mr. Wimmer** stated that the revised language (i) allows services to proceed once an evaluation is completed without waiting for a physician order and (ii) aligns Medicaid requirements with Medicare requirements. He informed that Committee that rejecting section 733.01.a would not remove the requirement for physician orders. **Mr. Wimmer** stated that the Division of Medicaid understands that physician orders are a concern for services delivered in schools. The Division of Medicaid will continue to work with the Department of Education and school-based providers to identify ways to minimize administrative burden while ensuring that Medicaid participants receive high-quality and well-coordinated care.

Vice Chairman Nuxoll asked the Committee members if they had any questions.

Chairman Heider asked Mr. Wimmer to clarify the action the Division of Medicaid wanted the Committee to take regarding this docket. **Mr. Wimmer** confirmed that the Division of Medicaid was requesting that the rule be approved in its entirety. The House Health and Welfare Committee previously approved the rule in its entirety.

Referencing the provisions related to service-specific participant eligibility for school-based services, **Senator Schmidt** asked whether a change requiring that certain information be kept in school records instead of medical records would result in Health Insurance Portability and Accountability Act (HIPAA) privacy concerns. **Mr. Wimmer** stated that all providers are required to maintain HIPAA compliant records and schools are subject to similar requirements under the Family Educational Rights and Privacy Act (FERPA). The records kept by school administrators are school records. **Senator Schmidt** asked Mr. Wimmer to clarify why the following subsection referenced "medical" records instead of "school" records. **Mr. Wimmer** indicated that the discrepancy may have been an oversight in drafting.

Senator Hagedorn noted that some provisions require that supervising practitioners must have regular one-to-one meetings with student participants to review treatment provided. **Senator Hagedorn** asked if there were accommodations regarding this requirement for students in rural areas. **Mr. Wimmer** responded that supervision would be allowed via telehealth. **Senator Hagedorn** asked how physicians would meet the requirements of section 733.01.a via telehealth. **Mr. Wimmer** answered that the physician order requirements were a separate issue from the requirements for community-based rehabilitation services which allowed for telehealth services.

Senator Schmidt asked Mr. Wimmer if these pending rules would improve the process for schools to bill and to be compensated for their provision of Medicaid services. **Mr. Wimmer** stated that the Division is doing its best to minimize the administrative burden for schools; he expects to continue working with schools to resolve their concerns.

TESTIMONY:

Vice Chairman Nuxoll invited testimony.

Cliff Hart testified on behalf of the Idaho Association of School Administrators (IASA). The IASA has established a legislative priority to remove obstructions in school-based Medicaid reimbursement programs. **Mr. Hart** reviewed his qualifications and many responsibilities as a special education director in a rural school district. In connection with rural school districts, **Mr. Hart** reviewed the impact of the physician order provisions found in sections 733.01.a.i-iii of the pending rules. **Mr. Hart** stated that rural school districts must typically contract with providers outside of their communities to obtain necessary school-based health services. **Mr. Hart** informed the Committee that these providers typically charge for health services, student participant evaluations, administrative costs, costs to attend IEP meetings and travel costs; Medicaid typically pays for the direct costs of health services and evaluations. **Mr. Hart** reviewed typical obligations and time constraints to assessing eligibility, designing IEPs and scheduling the provision of school-based services. Under the Individuals with Disabilities Education Act (IDEA), **Mr. Hart** stated that physician orders are not required to refer students to special education or to design and implement an IEP. However, requiring physician orders to obtain Medicaid funding for IEP would delay a rural school's reimbursement by 7 to 10 days. He commented that federal regulations do not require a physician's signature to obtain reimbursement for school-based services. **Mr. Hart** requested that sections 733.01.a.i-iii be rejected by the Committee.

Vice Chairman Nuxoll asked Mr. Hart if a physician's signature was required under federal regulations. Mr. Hart confirmed that only a referral or recommendation is required to obtain reimbursement for school-based services.

Senator Lee asked Mr. Hart to clarify how these pending rules will impede current practice. **Mr. Hart** clarified that schools could lose up to 30 days of Medicaid reimbursement.

Senator Schmidt asked if it was Mr. Hart's understanding that the current rule required a physician's order to begin services. **Mr. Hart** stated that schools could provide services based on a physician's diagnosis but could not be reimbursed for services until the physician's dated signature is obtained. **Senator Schmidt** asked how schools currently obtain a necessary diagnosis. **Mr. Hart** responded that many times schools obtain information from the child's personal physician. He noted that the physician's signature is typically obtained from a consulting physician.

Senator Lodge noted that if Medicaid is going to pay for school-based services, they must be assured that the services are medically necessary. **Senator Lodge** asked if a physician is not involved, how do schools determine services are medically necessary. **Mr. Hart** clarified that he did not have an issue with obtaining a physician's signature; he has an issue obtaining a physician's signature that is dated. **Senator Lodge** asked if Mr. Hart's concern was that Medicaid would not reimburse schools for services provided prior to the date of the physician's signature. **Mr. Hart** indicated yes. **Senator Lodge** asked whether schools could wait until a physician's signature was obtained to begin providing services. **Mr. Hart** discussed time constraints. **Senator Lodge** reiterated the importance of determining that services are medically necessary.

Senator Hagedorn asked Mr. Hart how small schools afford to develop IEPs and provide school-based services while waiting for Medicaid approvals and reimbursements. Speaking to his experience with small schools, **Mr. Hart** stated that school experienced great difficulty.

Allison Walters, President of the Autism Society of the Treasure Valley, testified against the physician order provisions of the pending rules and submitted letters from Misty-Dawn James and Heather Irons (see attachment 1) for consideration. **Ms. Walters** specifically requested that the Committee reject the rule and ask the Division of Medicaid to allow reimbursement for school-based services on order of the "IEP team." **Ms. Walters** spoke to the capabilities and effectiveness of the IEP teams.

Senator Jordan asked Ms. Walters to discuss the structure of the IEP teams. **Ms. Walters** responded that there were minimum requirements for the types of professionals included on IEP teams.

Gwen Lloyd testified on behalf of School District 25 in Pocatello. **Ms. Lloyd** stated that she has been involved in education for over 40 years, and specifically has worked as an IEP specialist, a curriculum specialist and a medicaid reimbursement specialist. **Ms. Lloyd** asked the Committee to reject sections 733.01.a.i-iii of the pending rules. **Ms. Lloyd** reviewed the qualifications of select IEP team members and noted the members' abilities to make therapy determinations. In summary, **Ms. Lloyd** stated that the pending rules would limit Medicaid reimbursement funds received by schools and are overly burdensome for school administrators.

Senator Lee asked if the requirements for school-based services are similar to the requirements for community-based services. **Ms. Lloyd** responded that her school district is complying with current rules, but time delays impede the provision of services and reimbursements.

Senator Jordan asked whether Ms. Lloyd has ever had a physician question services being provided. **Ms. Lloyd** responded no.

Senator Lodge asked Ms. Lloyd to clarify her concerns regarding the timing of Medicaid reimbursements. **Ms. Lloyd** responded that there are certain situations that result in the loss of federal reimbursements and the schools are therefore required to spend State funds to provide services.

Kindel Mason, Special Education Director of the Jerome School District, testified against sections 733.01.a.i-iii of the pending rules. **Mr. Mason** requested that professionals who sit on IEP teams be authorized to sign necessary orders. Referencing earlier questions, **Mr. Mason** noted that schools do not get paid without physicians' signatures.

Tammy Emerson testified on behalf of the Idaho Speech and Hearing Association and in support of the pending rules. **Ms. Emerson** addressed providers' specific concerns regarding the physician order requirements.

Karen Echeverria, Executive Director of the Idaho School Boards Association, testified against sections 733.01.a.i-iii (see attachment 2). **Ms. Echeverria** stated that schools do not receive Medicaid reimbursement until a physician signs orders. As a result of the physician order requirements, Idaho schools lose \$10 to \$40 million dollars in federal funding.

Kelly Hall, Special Education Supervisor for the Boise School District, stated that the Boise School District does currently seek Medicaid reimbursement for its special education programs. **Ms. Hall** expressed appreciation to the Department of Health and Welfare. She noted that, while the Boise School District supports the majority of these pending rules, the Boise School District did have concerns regarding select provisions. Specifically, the Boise School District would like to add special education teachers to the list of providers of community-based rehabilitation services. Additionally, **Ms. Hall** discussed concerns regarding the therapist provisions in section 730.08 of the pending rules.

DISCUSSION:

Vice Chairman Nuxoll asked Dennis Stevenson, the Administrative Rules Coordinator of the Idaho Department of Administration, to explain what will happen if the Committee rejects this rule. **Mr. Stevenson** replied that if the Committee rejected any portion of this rule, it would request that a current resolution be drafted.

Senator Martin asked if the House has passed this rule. **Vice Chairman Nuxoll** confirmed that the House Health and Welfare Committee approved the rule as written. **Mr. Stevenson** responded that if this Committee drafts a concurrent resolution to reject this rule and the House does accept the resolution, the rule will be approved for lack of concurrence to reject.

Redirecting the discussion to Mr. Wimmer, **Senator Martin** asked Mr. Wimmer to discuss the impact of striking sections 733.01.a.i-iii on the current practices of the Division of Medicaid. **Mr. Wimmer** responded that the intent of these rules was to give the providers of school-based services 30 extra days to get a physician's order. **Senator Martin** asked Mr. Wimmer to confirm that school-based providers would be reimbursed for services provided during those 30 days. **Mr. Wimmer** confirmed. He stated that no claims can be made until the physician's order is obtained, but noted that claims for that period may be made if the physician's order covers that period.

Senator Lee asked what problem the Division of Medicaid was trying to solve with this set of pending rules. **Mr. Wimmer** responded that the Division of Medicaid was attempting to remove a burden, not to create one.

MOTION:

Chairman Heider moved to hold **Docket No. 16-0309-1501** in Committee. **Senator Martin** seconded the motion.

SUBSTITUTE MOTION:

Senator Hagedorn made a substitute motion to approve **Docket No. 16-0309-1501** except for the changes in sections 733.01.a.i-iii. **Senator Harris** seconded the substitute motion.

ROLL CALL VOTE ON SUBSTITUTE MOTION:

Senator Martin called for a roll call vote on the substitute motion. **Vice Chairman Nuxoll**, **Senator Hagedorn**, **Senator Lee** and **Senator Harris** voted aye. **Senator Lodge**, **Senator Martin**, **Senator Jordan** and **Chairman Heider** voted nay. **Senator Schmidt** was absent for the vote. **Senator Jordan** noted that she voted nay to allow time for all issues regarding this rule to be addressed. The substitute motion failed.

ROLL CALL VOTE ON ORIGINAL MOTION:

Vice Chairman Nuxoll called for a roll call vote on the original motion. **Vice Chairman Nuxoll**, **Senator Lodge**, **Senator Hagedorn**, **Senator Martin**, **Senator Lee**, **Senator Jordan** and **Chairman Heider** voted aye. **Senator Schmidt** was absent for the vote. The original motion carried.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 5:15 p.m.

Senator Heider
Chair

Karen R. Westbrook
Secretary