

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 03, 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 3:02 p.m.

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

DOCKET NO. 16-0501-1501 **Rules of the Department of Health and Welfare Relating to the Use and Disclosure of Department Records.** **James Aydelotte**, State Registrar and Chief of the Bureau of Idaho Records and Health Statistics, Division of Public Health in the Department of Health and Welfare (Department), presented this docket.

Mr. Aydelotte stated that the Department's use and disclosure rules govern who has access to vital records and deems such authorized individuals to have a "direct and tangible interest" in the records. In 2015, the Idaho Legislature amended Idaho Code § 54-1142, which designates who has the right to control the disposition of a decedent's remains in the absence of a pre-arranged funeral plan. Specifically, Idaho Code § 54-1142, as amended, clarifies that individuals granted this authority will have a "direct and tangible interest" in the death record. **Mr. Aydelotte** said that the purpose of this docket is to make the Department's use and disclosure rules consistent with Idaho statute by amending the definition of who has "direct and tangible interest" in vital records. **Mr. Aydelotte** stated that there is no fiscal impact for this pending rule. He stated that no negotiated rulemaking was conducted and no comments were received during the public comment period.

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

Senator Martin asked who is eligible to receive the information, like a death certificate, for someone who has passed away. **Mr. Aydelotte** answered that typically family members request that information through the funeral home.

Vice Chairman Nuxoll asked if the rule prevents disputes over obtaining the death certificate for a person who has passed away. **Mr. Aydelotte** replied in the affirmative. This rule aligns the list of people who can arrange funerals with those who are allowed to obtain a death certificate.

MOTION: There being no further questions, **Senator Schmidt** moved to approve **Docket No. 16-0501-1501**. **Senator Hagedorn** seconded the motion. The motion carried by **voice vote**.

Rules the Department of Health and Welfare Relating to Certified Family Homes. Tamara Prisock, Administrator, Division of Licensing and Certification in the Department, presented this docket.

Ms. Prisock stated that a certified family home allows individuals to remain in a family-styled living arrangement, usually within their own communities. These homes provide shelter for elderly individuals and individuals who have a mental illness, developmental disabilities, physical disabilities or other conditions that prevent them from living alone, and whose mental, emotional and physical condition can be met by a care provider. A certified family home provider typically cares for between 1 and 4 residents in the provider's own home. There are more than 2,300 certified family homes in the State. **Ms. Prisock** reviewed Idaho's certified family home statistics, summarized how certified family home providers are paid, and discussed the role of the Certified Family Home Program within the Division of Licensing and Certification (see attachment 1).

Ms. Prisock stated that Idaho Code § 56-264(6)(f) requires the Department to implement licensing fees to cover the costs of initial certification and recertification of certified family homes (see attachment 2). In March 2012, the Department implemented an initial fee of \$150 for inspection, orientation and consultation for a new certified family home. Additionally, a monthly certification fee of \$25 is invoiced quarterly. **Ms. Prisock** indicated that the revenue from these fees is not adequate to cover all operating costs of the Certified Family Home Program (see attachment 3). Certified Family Home Program costs for FY 2015 were approximately \$87,000 more than the revenue generated from fees. The Department is proposing to increase the initial certification fee from \$150 to \$175 and to increase the monthly certification fee from \$25 to \$30. Next, **Ms. Prisock** indicated that this rule change will require certified family home providers complete a "Basic Medications Awareness" course instead of a general course given by Idaho's Professional and Technical Education Department (IPTED). The new course, specifically designed for certified family home providers, will cost the provider \$60 instead of \$75.

Ms. Prisock stated that the Department held negotiated rulemaking sessions in three locations across Idaho. During these rulemaking sessions, the Department presented two dockets: these fee-related rules and rules related to substantive certified family home program changes. Additionally, both dockets were placed on the Department's website for certified family home providers and both dockets were presented to the Community Care Advisory Council for comments. **Ms. Prisock** indicated that five providers shared concerns about proposed fee increases during the comment period. She noted that the Department did not negotiate with the providers about the amount of the increase because the increase is just enough to cover program costs. The second docket related to substantive certified family home program changes was pulled in September to allow the Department more time to work with providers.

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

Comparing the three obligations set forth in Idaho Code § 5656-264(6)(f) with the twelve responsibilities set forth in the Department's certified family home information sheet (see attachment 1), **Senator Hagedorn** asked if the additional responsibilities included on the information sheet were set for in another section of Idaho Code. **Ms. Prisock** answered that Chapter 35 of Idaho Code Title 39 sets forth the Department's responsibilities regarding certified family home providers. **Senator Hagedorn** asked why the Division of Licensing and Certification has staff located in ten regions instead of the typical seven geographic regions. **Ms. Prisock** replied that the staff members are located in the seven geographic regions, but regions 3, 4 and 7 have two staff members to accommodate the population.

Senator Lee asked if the proposed "Basic Medications Awareness" course would be required in addition to the current IPTED course. **Ms. Prisock** answered that the proposed course would be an option for certified family home providers; providers may take either course. **Senator Lee** inquired whether the Department had worked with IPTED to add specialized certified family home training to the existing course before deciding to create a separate course. **Ms. Prisock** answered that the Department did have conversations with IPTED, but they wanted the course to remain relevant to a wide range of health care providers, instead of including specialized certified family home training.

Senator Harris asked for clarification regarding the fees discussed during the comment period. **Ms. Prisock** stated that the Department did inform stakeholders about the fee increases, but did not negotiate the amounts of the fee increases.

Senator Schmidt asked if the responsibilities of the Certified Family Home Program are established by the State or the federal government. **Ms. Prisock** answered that this is a State-only program and all requirements come from the State in statute and administrative rule. **Senator Schmidt** asked for clarification regarding the purposes of the annual recertification fees and the monthly fees. **Ms. Prisock** stated that both fees are used to inspect certified family homes annually. **Senator Schmidt** asked if the Department had a full-time personnel (FTP) count. **Ms. Prisock** stated that the FTP count for the program is twelve; ten specialists, one program manager and one administrative assistant. **Senator Schmidt** asked if the Department contracts any certified family home inspections to third-party inspectors. **Ms. Prisock** replied that the Department does not contract for third-party inspections.

Senator Hagedorn asked if all FTP positions in the Division of Licensing and Certification were filled last year. **Ms. Prisock** answered that there was a specialist position vacancy and an administrative assistant position vacancy, which were both filled within a few months. **Senator Hagedorn** asked what comments the Department received from the Community Care Advisory Council regarding the fee increases. **Ms. Prisock** replied that none of the certified family home providers serving on the Community Care Advisory Council supported the fee increases.

Senator Lodge asked Ms. Prisock to describe the inspection process for certified family homes. **Ms. Prisock** indicated that the inspections related to the safety of the physical environment, medication management and resident activities. Additionally, inspectors review the adequacy of resident admission agreements and resident fund management. **Senator Lodge** asked if measuring windows was part of the annual inspection. **Ms. Prisock** answered that she does not know if each of the specialists measure the windows annually, but she noted that there is a width requirement for windows. **Senator Lodge** stated that a comment she had received indicated that window measuring was a waste of time and money if the windows have not changed over the years. **Ms. Prisock** commented that the ongoing substantive review of program rules is intended, in part, to address how the Department could streamline inspections.

Senator Schmidt asked if there have been problems in certified family homes that are addressed by the inspections. **Ms. Prisock** answered that there are problems that need to be addressed by inspections. There is a spectrum of good homes and bad homes across the 2,300 certified family homes in the State.

Senator Schmidt asked Senator Lodge whether the intent of the original legislation was to have certified family homes to pay for the costs of their own inspections. **Senator Lodge** replied that the intent of the legislation was for providers to pay for the costs of their inspections. The legislature wanted to reduce cost to taxpayers related to the cost of certified family homes doing business. **Senator Hagedorn** commented that Idaho Code § 39-3501, enacted in 2005, expressly states the legislative intent. The provision does not suggest that certified family home providers be self-sustaining. However, he stated that Idaho Code Title 56 Chapter 2, enacted in 2011, does require that fees cover certification costs. Therefore, **Senator Hagedorn** suggested that costs not related to certification were to come from sources other than fees. **Ms. Prisock** requested that Dave Taylor, Deputy Director and Chief Financial Officer, Support Services of the Department, address this issue. **Mr. Taylor** stated that funds that were originally allocated to the certified family homes program were reverted to the General Fund. The funding split at the time of the reversion was 50/50. He indicated that this docket was proposed because the Department believed that State statutes required the Certified Family Home Program to be self sufficient. He stated that the Department has covered the cost of the Certified Family Home Program with other Department funds.

Vice Chairman Nuxoll asked how much the providers are paid per day to take care of their clients. **Mr. Taylor** replied that Medicaid pays providers \$53 per day for medical services. **Vice Chairman Nuxoll** asked what other payments the certified family home providers receive. **Mr. Taylor** replied that the certified family home providers may negotiate to receive a portion of their clients' Supplemental Security Income (SSI); provided that each client retain at least \$100 per month for personal expenses. If SSI pays a client \$733 per month, then the provider can negotiate with the client to be paid up to \$633 per month.

MOTION:

There being no further questions, **Chairman Heider** moved to approve **Docket No. 16-0319-1502**. **Senator Martin** seconded the motion.

DISCUSSION:

Senator Schmidt indicated that of the 2,300 people in the program, 1,600 are cared for by family members. He stated that this was the goal of the program. He indicated that he is uncomfortable saying to providers that they are a business, even though the Committee has to look at it like a business. He stated his opposition to this docket. **Senator Lodge** commented that she supported the docket because the inspections are needed to ensure that certified family homes provide a safe environment for their clients. **Senator Lee** indicated that her constituents indicated that they do not want an increase in fees. She stated that the relationship between inspectors and providers needs to be improved. She stated her opposition to this docket. **Senator Hagedorn** commented that the State was trying to do the right thing by allowing people the opportunity to receive care in a home environment. He stated that the funding issue for the Certified Family Home Program has been confused by statutory changes by the Legislature. He commented that statute needs to be changed rather than rules to address the funding issues. He recommended that the Legislature work with the Department to revise the relevant statutes to reflect an intentional funding structure. He stated his opposition. Acknowledging the benefits of certified family homes, **Vice Chairman Nuxoll** indicated that she wants the program to be self-funded.

**ROLL CALL
VOTE:**

Vice Chairman Nuxoll called for a roll call vote. **Senator Lodge, Senator Martin** and **Chairman Heider** voted aye. **Vice Chairman Nuxoll, Senator Hagedorn, Senator Lee, Senator Harris, Senator Schmidt** and **Senator Jordan** voted nay. The motion failed.

Chairman Heider suggested that each Committee member visit a certified family home. He praised the work that is done in the certified family homes and stated that Idaho needs this program. **Chairman Heider** introduced Joyce Broadsword, former Idaho Senator. **Senator Schmidt** commented that his vote was not a reflection of unwillingness to fund the Certified Family Home Program. He stated that his issue was related to the funding structure; providers should not have to pay for their own inspections. **Senator Lee** commented that she has been in certified family homes; her vote was also not a reflection of unwillingness to fund the Certified Family Home Program. **Vice Chairman Nuxoll** reiterated her desire to see the program be self-funded.

**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 much of the concern raised in previous testimony suggested that section 733.01.a.i-iii created a new requirement for schools. He stated that the provisions do not create a new requirement for schools, but rather create some flexibility for providers. The purpose of this rule is to allow therapists the opportunity to write up a specific plan of care and let the physician sign off on it for treatment and billing purposes. **Mr. Wimmer** stated that the Department has proposed modifications to their Provider Handbook to address the concerns raised by testimony earlier in the week. **Mr. Wimmer** stated that the Department will continue to work with providers.

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

Senator Lodge indicated her concern that previous testimony identified that some districts have nurse practitioners sign off on medical services for children they have not seen. **Mr. Wimmer** stated that the Department has concern regarding this practice as well. He stated that this was not the intent of the rules. Over 98 percent of the children have a primary care physician (PCP) assigned to them. Medicaid pays the PCP to look at records and perform care management. **Mr. Wimmer** acknowledged that the Department needs to address this issue in future rules.

TESTIMONY:

Vice Chairman Nuxoll invited testimony.

Lisa Hettinger, Administrator of Medicaid Benefits in the Department, testified that this rule does not change the requirement to obtain physician orders; this rule only addresses the timing for those orders.

Senator Martin asked what the IEP team is. **Mr. Wimmer** answered that IEP stands for individualized education plan. The team consists of a child's family and providers. **Senator Martin** asked who controls what services the child receives. **Mr. Wimmer** responded that the IEP team has a central role in determining the needs of the child.

Referencing the language in section 733.01.a.iii, **Senator Schmidt** asked Mr. Wimmer to clarify whether billings may include services that were provided prior to when the bill was submitted. **Mr. Wimmer** responded yes; he commented that the specific language Senator Schmidt referred to is not intended to indicate that services will not be reimbursed.

Karen Echeverria, Executive Director, Idaho School Boards Association (ISBA), confirmed the ISBA's rejection of this section. She said that school districts do not and will not get paid for services rendered under this rule until the dated referral or IEP is signed by the physician. She indicated that the Department interprets the federal signature requirement to mean only the signature of a physician, physician assistant or a nurse practitioner. Several surrounding states interpret the federal signature requirement broadly. **Ms. Echeverria** reviewed regulations in Washington, Oregon, Colorado and Montana. The ISBA would like to see the expansion of the federal practitioner of the healing arts definition to include different types of therapists and psychologists in the school setting. **Ms. Echeverria** indicated that it is hard for rural districts to comply with the requirement that a physician sign for every service. She stated that many school districts do not bill for services because of the strict requirements. A sample analysis of 20 school districts showed that between \$10 million and \$40 million are not claimed from federal moneys per year. Addressing Senator Lodge's concern regarding billing for unnecessary services, **Ms. Echeverria** stated that in the last two years there has been more consistent and ongoing training for school medical service providers; additionally, the Department conducts regular audits. She reiterated the ISBA's recommendation to reject section 733.01.a.i-iii.

Senator Lee asked Ms. Echeverria to explain the schools' process for obtaining physician orders if the Committee rejects this section at issue. **Ms. Echeverria** replied that schools will still have to get a physician signature. She commented that the physician signature requirement is present throughout the rule and the addition of it in this section made the problem worse.

Senator Lodge asked how many school districts do not bill or only partially bill Medicaid for services provided. **Ms. Echeverria** answered that she did not have the exact numbers, but districts who do not bill, do not bill at all. There is no partial billing. **Senator Lodge** redirected her question to Mr. Taylor. **Mr. Taylor** responded that 120 school districts billed for school-based services in 2015. The total amount paid was \$32.2 million; school districts paid \$9.1 million of the total and the federal government paid \$23.1 million.

Senator Schmidt asked Mr. Taylor if smaller districts submitted billing. **Mr. Taylor** answered that there are some smaller school districts who bill Medicaid. He stated that he would provide a list to the Committee.

Senator Hagedorn asked Ms. Hettinger why a handbook is needed to clarify the rules. **Ms. Hettinger** replied that the provider handbook has existed for many years as a procedural-level clarification for the rules and is always more specific than rule. She commented that section 733.01.a.iii relaxes the requirements on the billing of services before having the official signed order. She indicated that services rendered within the 30 days awaiting a returned signed order from physician may be billed once the order is received.

Senator Lee asked Ms. Hettinger if schools would not get paid for services rendered within the 30 days if the Committee rejects section 733.01.a.i-iii. **Ms. Hettinger** stated that Senator Lee's statement was correct and would also affect community providers as well.

Senator Martin asked Mr. Wimmer if the Department was open to a dialogue with stakeholders. **Mr. Wimmer** replied that the Department is always open to having a dialogue and are always committed to work with providers in minimizing their burden.

MOTION: There being no further questions, **Senator Hagedorn** moved to approve **Docket No. 16-0309-1501**, but strike section 733.01.a.i-iii. **Senator Harris** seconded the motion.

ROLL CALL VOTE: **Senator Martin** called for a roll call vote. **Vice Chairman Nuxoll, Senator Hagedorn, Senator Lee** and **Senator Harris** voted aye. **Senator Lodge, Senator Martin, Senator Schmidt, Senator Jordan** and **Chairman Heider** voted nay. The motion failed.

MOTION: **Senator Martin** moved to approve **Docket No. 16-0309-1501**. **Senator Lodge** seconded the motion.

SUBSTITUTE MOTION: **Senator Schmidt** moved to approve **Docket No. 16-0309-1501** and direct the Department to continue provider negotiations. **Senator Lee** seconded the motion.

ROLL CALL VOTE ON THE SUBSTITUTE MOTION: **Vice Chairman Nuxoll** called for a roll call vote on the substitute motion. **Senators Lodge, Senator Hagedorn, Senator Martin, Senator Lee, Senator Harris, Senator Schmidt, Senator Jordan** and **Chairman Heider** voted aye. **Senator Nuxoll** voted nay. The substitute motion carried. No vote was taken on the original motion.

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

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 4:31 p.m.

Senator Heider
Chair

Karen R. Westbrook
Secretary

Michael Jeppson
Assistant