

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, January 24, 2017

TIME: 3:00 p.m.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, 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 3:00 p.m.

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

DOCKET NO. 16-0303-1601 **Child Support Services. Cade Hulbert**, Child Support Program Manager with the Department of Health and Welfare (Department), presented this docket. He explained several enforcement actions the Department employs when collecting child support. There are approximately 160,000 open child support cases in Idaho and the Child Support Program currently serves around 400,000 parents and children. The Idaho Child Support Services (ICSS) collected over \$215 million in child support last year. The mission of ICSS is to ensure that children receive the necessary financial and medical support from both parents. When a noncustodial parent falls behind on their child support, ICSS seeks to get this parent back in compliance.

Mr. Hulbert said one of the many tools ICSS uses to encourage payment is to report child support arrearages to Consumer Credit Reporting Agencies (CCRA). The current rule requires the program to report noncustodial parents to CCRA when the overdue support or arrearages are in excess of \$500. Often by the time ICSS receives a finalized child support order from the courts, the noncustodial parent is already in arrears as the legal process can take up to 90 days or more. Some noncustodial parents were sent to CCRA before the noncustodial parent even had a chance to pay the support amount.

Mr. Hulbert informed the Committee that the Department has received numerous consumer complaints about this rule over the past few years as noncustodial parents receive information from the CCRA about outstanding debts. ICSS believes in giving noncustodial parents an opportunity to pay the support amount first before taking enforcement actions.

Mr. Hulbert explained the proposed rule modifies the amount of arrearages reported to CCRA to \$2,000 and three months with no payment. ICSS increased the dollar amount from \$500 to \$2,000 because monthly support amounts can be greater than \$500, especially when there is more than one child involved in the case. This \$2,000 amount is also consistent with other enforcement tools that the Department utilizes. ICSS added the three month condition to ensure adequate time for the order to be set up in their system and communicated with the customer after the court order is received.

Mr. Hulbert reported the Department conducted negotiated rulemaking on the docket this past July, but received no comments from the public. ICSS wants to reassure custodial parents are taking every action possible to collect child support while helping noncustodial parents understand the benefits of making consistent payments. There are no anticipated fiscal impacts to the State as the rule is cost-neutral.

Senator Martin asked Mr. Hulbert to elaborate on the word "shall" and "will" regarding the Department's notification of the noncustodial parent when there are arrears in the payment. **Mr. Hulbert** explained the Department will notify the noncustodial parent verbally and in writing. **Senator Anthon** clarified the word "shall" changed to "will" in the rule to make it more readable.

Senator Anthon asked about the remedies taken by the Department so noncustodial parents' credit report is not damaged, especially when the child custody order has not come into effect and reporting has already taken place to the CCRA given that there are 30 days to rectify with the CCRA. **Mr. Hulbert** stated the noncustodial parent are already given a written and verbal notification, and when the case is sent to CCRA, the Department handles the corrections on a case by case basis.

Senator Heider asked the reason for a three-month waiting period for the families until the child support payment is made. **Mr. Hulbert** explained the Department takes other enforcement actions before the end of the three-month period. For instance, the Department automatically sends an income withholding order to receive payments from the noncustodial parent's employer, suspends drivers licenses, intercepts state and federal tax refunds, and a few other enforcement remedies.

Vice Chairman Souza emphasized that \$2,000 seems right since the rule has not been updated since July 1998. She also shares Senator Heider's concern about a three-month waiting period to receive child support payment arrearages, and child support payments seem to be more substantial now than in 1998. **Mr. Hulbert** explained child support payments have risen as child support cases have increased and because of the economy.

Senator Anthon spoke in support of the docket and addressed Senator Heider's comments regarding the three-month waiting period when a child support payment is not made. He stated the Department should give the noncustodial parent an opportunity to pay the arrearages before the case is reported to the CCRA because the credit reporting aspect gets very complicated and has a long-term effect when reported inaccurately.

MOTION: There being no more questions, **Senator Anthon** moved to approve **Docket No. 16-0303-1601**. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0304-1601 **Food Stamp Program in Idaho.** **Kristin Matthews**, Food Stamp Program Manager, presented the docket. She explained the Idaho Food Stamp Program, also known as the Supplemental Nutrition Assistance Program (SNAP) provides food assistance to Idaho's neediest families. Food stamps are 100 percent funded by the U.S. Department of Agriculture (USDA) and the state processes and approves food stamps under specific state program requirements.

Ms. Matthews explained the docket contains two proposed changes to the Food Stamp Rules which update program regulations and Department processing standards. The first change updates language applicable to the Able Bodied Adults Without Dependents (ABAWD) time limit. ABAWDs are required to either be working or participating in work search activities to receive benefits. If an ABAWD fails to comply with the specific state program requirements, they are restricted from receiving benefits for a three year time period. Based on a recent policy clarification, the Department currently is out of sync with this federally-mandated three-year time period. The only change to this rule is striking the time period that began in December 1996, so it is not in conflict with the counter the Department currently uses to determine compliance with work activities for ABAWDs. No other changes to work requirements for the SNAP program have been made. The second change strikes language requiring the food stamp eligibility notifications to include Idaho Administration Procedures Act (IDAPA) rule citations when informing customers of eligibility decisions. Comments received from legal aid, customers, and federal partners support the proposed rule to allow the Department to make determinations as to when IDAPA rules are needed on the notice. Including rule citations on all notices often leads to confusion making the notices read more like a legal document which can be hard for many people to understand. The Idaho Food Stamp Program continues to provide citations, both State and federal, when requested by participants, attorneys, and other interested parties. There is no fiscal impact to the State as a result of this rule change.

Senator Lee asked why the remedy is to strike the language and not revise the time period of this rule. **Ms. Matthews** explained in order to stay in compliance with the federal regulations, the Department needs to strike the language. The Department started tracking again in January 2016, and the three year period will run from January 2016 through December 2018. As the rule is currently written with the three year counter period starting December 1996, the counter period would end in December 2016, so the Department would only have one year to comply with the new rule by leaving that language in the rule.

Senator Lee was concerned leaving a citation to the rules in the notice and the Departments efforts to make sure people and/or their advocates understand these notifications. **Ms. Matthews** explained if a family was calculated to be over income and cited, they were not given any explanation regarding how their determination was calculated. However, the IDAPA rule now explains to people and/or their advocates the different types of incomes considered for eligibility determination. The Department has now realized by putting more information on the notice, IDAPA rule citation interferes in a fair hearing situation. Especially when there are multiple citations, the notice only trigger the first IDAPA citation that go towards the eligibility determination and often lose hearings.

Chairman Souza asked if the support people, attorney, or case worker for the family who receives the notice can contact the Department for further information about the specific IDAPA rules that apply. **Ms. Matthews** confirmed that is correct.

Senator Lee stated the Department should make sure when the eligibility determinations are made, the notices and citations should be very transparent particularly that the Department added IDAPA rules.

Chairman Heider asked for a brief synopsis of the changed rule from one-day delivery to ten-day delivery of food stamps and food pick up. **Ms. Matthews** explained that prior to implementation, the Department spent a year communicating with external partners, including retailers for smooth functioning of delivery of food stamps and food pick up. The Department arranged to handle a large volume of phone calls during the change from customers inquiring what their issuance date was. The Department has an increased call volume for the first ten days of every month from customers inquiring when benefits are issued. The feedback from the food banks and retailers were good.

Senator Martin asked about the costs associated with the change from one-day delivery to ten-day delivery of food stamps and food pick up. **Ms. Matthews** explained the Department had budgeted for those one time costs. Currently, the Department's budget continues to cover any costs associated with increased call volumes.

MOTION: There being no more questions, **Senator Foreman** moved to approve **Docket No. 16-0304-1601**. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senator Lee** and **Senator Jordan** requested to be recorded as voting nay.

DOCKET NO. 16-0305-1601 **Eligibility for Aid to the Aged, Blind, and Disabled (AABD).** **Camille Schiller**, Program Manager, Health Coverage Assistance presented this docket. **Ms. Schiller** explained this docket addresses three changes to be made to the Medicaid for the Aged, Blind and Disabled (AABD) program. First adding depreciation as an allowable expense to be used in the calculation of self-employment income, which will align the program with other Health Coverage Assistance program as well as federal requirement.

Ms. Schiller explained the second change to clarify eligibility to receive nursing home Medicaid services. The previous rule stated that participants could only be eligible for nursing home services if the participant met the criteria of AABD Medicaid, including a disability determination by the Social Security Standards. Guidance received from the Center for Medicaid and Medicare Services confirmed that individuals meeting nursing home level of care, the appropriate income, and resource limits for the program, were eligible to receive this coverage. A level of care determination was made by a physician at the nursing home to determine if the participant met the criteria needed for services provided by the facility. This determination does not always mean that the participant has met the disability criteria as established by the Social Security Administration. The AABD does not anticipate a fiscal impact as their practice has been in alignment with federal guidance. This rule only changes the language in IDAPA rule to meet federal regulation.

Ms. Schiller stated the final change is based upon a recent interpretation of federal requirements in regard to how annuities are considered when determining asset transfer penalties for eligibility for AABD Medicaid programs. Annuities that are irrevocable are generally counted as an asset transfer penalty unless they meet certain criteria. The guidance does not allow an interest test to be applied when determining if the annuity can be counted as an asset transfer without penalty. This interest test has been used in the past when interest rates were higher, as the interest test ensured the "soundness" of annuity. Interest rates are now significantly lower and therefore it is no longer a reasonable test. The AABD program requests to strike the requirement of the interest test.

Ms. Schiller commented negotiated rulemaking was not conducted for these changes as they were simple in nature and conferred a benefit to the recipients. There were no comments received for any of the changes during the public comment period.

Senator Martin referred to page 58 of the pending rule review book regarding residency. He asked why the rule says the AABD program determines the participants are disabled for the duration of the residency. **Ms. Schiller** explained when participants are in the nursing facility and the physician has determined they should stay there, the participants should be considered disabled for this program.

Senator Anthon asked if AABD program participants' residency determined by the physician was good for five years. **Ms. Schiller** confirmed that was correct.

MOTION: There being no further questions, **Senator Harris** moved to approve **Docket No. 16-0305-1601**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0319-1601 **Rules Governing Certified Family Homes.** **Steve Millward**, Manager, Certified Family Home Program, Division of Licensing and Certification presented this docket regarding proposed changes to rules governing Certified Family Homes (CFHs) in Idaho. He explained the purpose of a CFH is to provide a home-like, family-styled residential living environment to allow vulnerable adults who are unable to live alone to remain in their own communities, delaying the need to live in a more expensive institutional setting. A CFH provides a home to individuals who are elderly, have mental illness, developmental disabilities, physical disabilities, and whose mental, emotional, and physical condition can be met by the home care provider. CFHs have between one to four residents in the provider's own home, with the average home caring for a single resident. Care by a relative in a home setting accounts for 76 percent of CFHs. Currently, there are approximately 2,400 CFHs located across the State.

Mr. Millward stated negotiated rulemaking sessions were held with stakeholders across the State in May 2016. The first change the CFH Program seeks to make this year regards legislation from two years ago, when the CFH citation program worked with the Veteran's Administration (VA) to exempt VA medical foster homes from additional State CFH certification if the medical foster home cared only for veterans who did not receive Medicaid benefits. VA medical foster homes are similar to CFHs, but the requirements established by the VA are much stricter than the requirements for CFHs. That legislation passed, so the new rule change aligns administrative rules with the change in statute exempting strictly VA medical foster homes from additional certification as CFHs.

Mr. Millward said the remaining changes in this docket relate to resident rights and notice of termination of the admission agreement. As rules were reviewed earlier in the year for potential changes, the CFH Program team discovered the rules relating to termination of the admission agreement between a CFH provider and the residents were inconsistent with Idaho landlord tenant law. The CFH Program proposed to replace the minimum 15 days notice requirement now in effect for termination of the admission agreement with a minimum 30 days notice, unless the termination was for any of the reasons outlined in IDAPA 16.03.19.260.02.b-e. This change aims to align CFH rules with Idaho landlord tenant law, while simultaneously affording vulnerable adults with potentially complex medical and/or behavioral conditions the additional time they need to find a suitable living arrangement.

Senator Lee asked how many homes of both veterans and non veterans does this rule currently apply. **Mr. Millward** replied the numbers are relatively low.

Vice Chairman Souza asked if the number of CFHs in Idaho is 7,500. **Mr. Millward** replied there are 2,400 CFHs in Idaho and 76 percent of those care for their own family members.

MOTION: **Senator Lee** moved to approve **Docket No. 16-0319-1601**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

Investigation of Enforcement of Fraud, Abuse, and Misconduct (IFFAM). **Steve Bellomy**, Bureau Chief, Audits and Investigations for the Department of Health and Welfare presented this docket. The Audit and Investigation Team's (Team) role is not about measuring compliance, but targeting questionable billings and recovering improper payments. The Team audits are not representative of the average provider. The providers are selected because someone reported to the Team or because the Team noticed an unusual activity in claims data suggesting improper billing. Last year, the Team completed 557 audits, and identified \$4.1 million in overpayments. The Team assessed penalties in 23 percent of those audits. After an audit, the Team can a wide range of actions including, no action, a letter of instruction, recoupment of overpayments and penalties, termination of provider agreement, exclusion from the Medicaid program, and referral to the Attorney General's Office for criminal investigation.

Mr. Bellomy informed the Committee the Team operates under a very broad range of rules in IDAPA 16.05.07. These rules govern how the Team conducts audits, actions taken by the team, and administrative appeals. These pending rules amend Section 235 and added Sections 236 and 237, which were very narrow portions of the rules that focus on civil monetary penalties.

Mr. Bellomy commented this docket does not address all existing rules that give the Team authority to recover overpayments, suspend, terminate, or exclude providers. The three specific rules in Section 205 have been in effect since 1999, and give the Team authority to recover payments made for claims when services were not provided or were provided contrary to the program rules or provider agreement. Section 230 has also been in effect since 1999, stating the Department may impose a penalty if a provider fails repeatedly to comply with Medicaid rules or submits improper claims. Section 235 provides the reason for these penalties is intended to be remedial, at a minimum recovering costs of investigation and administrative review and placing the costs associated with non-compliance on the offending provider. The Team's purpose of S 1295 (2016) is accurately captured in these amended rules.

Mr. Bellomy explained the primary reason for the statute and rule change is to allow the Department to be more fair when assessing penalties. The new statute and proposed rule reduced the minimum penalty from 25 percent of each claim line item to 10 percent when violations were minor. Another important reason for changing the rule was to provide a fair structure to the penalties. The old rule identified one minimum rate of 25 percent did not explain how or why the team assessed a penalty greater than 25 percent. The proposed rules provides an increasing penalty rate for increasingly severe or frequent violations. Finally, the Team needed a fairer way of assessing penalties when employers failed to follow background check rules. In many settings, like residential care, several employees care for one client, so it is difficult to attribute a portion of one claim line for one non-compliant employee. The proposed rule applies a penalty based on each non-compliant employee.

Mr. Bellomy stated the Team worked diligently to engage providers in this rule amendment. Before the Team drafted rules, they created a chart showing how the penalties could be organized in the new rules. The chart and survey was emailed directly to many providers and the links to the materials were posted on the Medicaid Newsletter and website. The survey showed general agreement with the penalty chart. Some of those opposed to the penalties believed the team were being too lenient. In the survey, the Team asked providers to give a feedback about the chart and the changes recommended.

Mr. Bellomy reported the Team held public negotiated rulemaking meetings in Coeur d'Alene, Boise, and Pocatello, and only two people attended each meeting. The team was later invited by the Association of Community Providers to discuss the penalty chart and drafted temporary and proposed rules which were published in July 2016. The Team held public hearings after the rules were published again in the same cities as before, but no one attended. However, the Team received three comment letters from two associations and one hospital. The Team worked with the three commenters individually to make the rules clearer and then republished the pending rules in January. The Team's process was open and collaborative and in the last three weeks, seven school districts submitted comments expressing desire to be exempt from penalties. This request is inconsistent with the Statute and Medicaid rules. In Section 235, the rule was amended to reduce the minimum penalty rate from 25 percent to 10 percent. The Team created a chart (see Attachment 1) which shows organized penalties in a progression from minor violations to severe violations down the left and from minimum to enhanced penalties across the top. Specific examples were added for each category of violation in subsections 01 and 02. Finally, Section 237 described how penalties will be applied when a provider fails to obtain a background clearance for their employees.

Vice Chairman Souza asked for further explanation about the school districts' requests to be exempt. **Mr. Bellomy** explained by giving an example. He stated one of the concerns the Team received was regarding compounding penalties. For each individual claim line that is subject to a penalty, the team assigns the appropriate penalty rate but does not compound the penalties.

Senator Lee asked whether the school districts were subject to penalties and Medicaid reporting prior to this rule. **Mr. Bellomy** answered the school districts have always been subject to penalties and Medicaid reporting.

Senator Martin asked how many penalties were collected from this program. **Mr. Bellomy** replied schools have always been subject to paying penalties; however, because the schools were having trouble maintaining the Medicaid claim records for the audit, the Team agreed to withhold assessing penalties until July of last year. The Team has just begun the audit process and so the dollar amount in the last six months is the relevant period the Team can share with regards to the amount recovered in the overpayment and the penalties.

Ms. Lori Stiles introduced herself to the Committee on behalf of the Medicaid Program Integrity Unit (Unit). She explained that in the last six months, the Unit has completed 11 audits. In two cases, the Unit assessed civil monitoring penalties. The Unit recovered seven overpayments: one for approximately \$5,400 and the other for \$48.77.

Senator Martin asked to confirm if \$5,400 was the exact amount assessed and if that amount was for one or all the districts. **Ms. Stiles** confirmed it was \$5,435.90 and the amount collected was for one school district. The Unit had 11 of 15 individual cases from one school district that were reviewed and did not have the eligibility determination.

Senator Martin asked besides that particular district if other districts during this period were fined. **Ms. Stiles** replied not during the six month period. **Senator Martin** asked if the Unit has been imposing these fees previously and what the cost is to the districts. **Ms. Stiles** explained while the Unit may have recovered an overpayment, the Unit still has to look in to the conduct to determine if the school district should be subject to a civil penalty assessment. **Senator Martin** asked if the Unit anticipates collecting a large amount of money from the school districts and if there is a learning curve for the schools to comply with the Department's rules. **Ms. Stiles** replied until the Unit completes the audits, the Unit cannot determine if violations are repeated or substantial to warrant fines.

Vice Chairman Souza asked now that the six-month waiting period has expired to perform these audits in the school districts, how the Unit addresses any concerns with school administration to maintain the claims correctly in the future and what kind of feedback the Unit receives from the school districts. **Ms. Stiles** replied if the Unit finds the schools are incorrectly billing, the Unit educates the schools before the audit is completed and ensures billing is carried out appropriately. The Unit also visits the school to meet and address the concerns. When there is an impasse, the Unit offers an option to the schools to reach out with any concerns or comments to Ms. Stiles or Mr. Bellomy, who ensure the analyst's decisions and findings were appropriate.

Vice Chairman Souza asked if there was any process to explain the concerns to the school district that was fined \$5,400, and the reason the penalty became severe. **Ms. Stiles** explained in this particular case the Unit determined substantial rule violations when 11 of the 15 billings were not eligible to receive payments. The Unit did not get the required assessments to determine if those students were eligible for Medicaid services. **Vice Chairman Souza** asked if the school district administration or personnel understood the process and documentation of the claims audit. **Ms. Stiles** replied the analyst who audited the school is very well respected among the school districts and works very closely with the school districts to ensure the schools have an understanding of penalties and refunding overpayments.

Mr. Bellomy continued explaining his presentation on Section 235 of the rules to reduce the minimum penalty rate from 25 percent to 10 percent and a new section to help understand how the Unit organized these penalties in a progressive manner. Finally, Section 237 described how the penalties will be applied when providers fail to obtain background clearances for employees.

Senator Lee asked whether the complete payment is withheld in addition to the penalties, and the withheld funds are returned to federal and/or state funds. **Mr. Bellomy** explained penalties are in addition to recouping overpayments. Accepting return of overpayments is typically done only for minor rule violations. **Senator Lee** asked the consequences if this rule is not approved. **Mr. Bellomy** replied if this rule is not approved then the former standard will apply, which is a flat 25 percent minimum penalty rate.

Vice Chairman Souza asked if there is a process to appeal a fine or a penalty. **Mr. Bellomy** explained there are times when the Unit agrees that something is not clear and that is when the Unit decides not to assess a penalty and simply recoup an overpayment. At the end of the process, the appeal process is to request an administrative appeal, director's appeal, and district court.

MOTION:

Senator Martin moved to approve **Docket No. 16-0507-1601**. **Senator Heider** seconded the motion. The motion carried by **voice vote**

**PASSED THE
GAVEL:**

Vice Chairman Souza passed the gavel back to Chairman Heider.

ADJOURNED:

There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:58 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Committee Secretary

Arti Clark
Secretary