

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 26, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Senators Martin, Lee, Harris, Agenbroad, Foreman, and Jordan

ABSENT/ EXCUSED: Vice Chairman Souza and Senator Anthon

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.

APPROVAL OF MINUTES: **Senator Lee** moved to approve the Minutes of January 16, 2017. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

Senator Martin moved to approve the Minutes of January 18, 2017. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0308-1601 **Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program.** **Ericka Rupp**, introduced herself as Program Manager for the Division of Welfare in the Department of Health and Welfare (Department). The pending rule docket changes two definitions under the Department's program rules for Temporary Assistance for Families in Idaho (TAFI). The first change is the definition of "caretaker relative." The rule clarifies relationships that qualify as caretaker relatives when applying for assistance: grandparents, aunts, uncles, or cousins. Second, the definition of "parent" is changed to include a stepmother or stepfather as a parent when determining a household's eligibility status. These definition changes are reflected in various parts of the rule and must be updated to ensure accuracy across the entire chapter. The Department conducted negotiated rulemaking and did not receive any feedback during the public comment period.

Senator Lee inquired whether this docket also changes the definitions of the two terms in other parts of IDAPA. **Ms. Rupp** responded the docket only affects the TAFI program.

MOTION: **Senator Foreman** moved to approve **Docket No. 16-0308-1601**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0612-1601 **Rules Governing the Idaho Child Care Program (ICCP).** **Julie Hammon** introduced herself as the Deputy Administrator in the Department's Division of Welfare. This pending rule became effective October 1, 2016 to coincide with the effective date of reauthorization of the federal Child Care Development Fund. The changes add health and safety requirements for child care providers, streamline eligibility policies, and ensure parents and the general public have transparent information about available child care choices. Current income limit and eligibility requirements will remain the same. To be eligible, families must have a child under the age of 13, meet current income guidelines, and participate in a qualifying activity such as work or attending school. Keeping children in reliable child care is critical to a family's stability in the workplace as well as the child's development and educational success.

Ms. Hammon explained the rule docket contains three major eligibility changes for families:

- 1.) The new rule establishes a 12-month certification period for eligibility. Once a child is determined eligible under the federal poverty level limit, that child is eligible for 12 months as long as the family remains below 85 percent of the State median income.
- 2.) At the time of redetermination for eligibility, if the family's income has increased but is still below 85 percent of the State median income, the rule allows the family a three-month phase-out period to transition off assistance.
- 3.) A family with a temporary job loss or break in education or training can continue to receive assistance for no more than three additional months to search for a job, go back to work, or resume attendance in an education or training program. The family is still required to pay co-pays and additional child care costs, but it ensures stability by allowing the child to stay with the same provider during the break. It is often difficult to get a child placed with a quality child care provider, and losing the child's spot with the provider can be a barrier to returning to the workplace and maintaining consistency for the child.

Ms. Hammon advised the rule also includes changes to health and safety requirements for child care providers. Currently, all ICCP providers are required to undergo an annual health and safety inspection and maintain current pediatric cardiopulmonary resuscitation and first aid certification. The rule specifies the annual health and safety inspections will be unannounced. Also, the rule adds a pre-certification training requirement and requires annual professional development to maintain certification. The IdahoSTARS program offers courses that meet the training requirements at no cost to the provider, or providers can choose alternate courses to meet their own professional development needs.

Ms. Hammon explained all providers are currently required to have a background check at the time of certification. The new rule specifies providers must undergo a background check every five years. Providers have always been required to report child abuse and neglect. Now, providers must also report when a child has been seriously injured or died as a result of participating in the child care program. The Department must make substantiated complaints available to the public and will aggregate and publish data about death and serious injuries in child care. To simplify access to the data, the Department must develop an online web tool for consumers to view this information.

Ms. Hammon pointed out new Section 750.10 regarding "offenses not in the best interest of child care participants." The same provision has been in effect since 2009 as a ground for the Department to refuse to enter into a provider agreement. This docket adds the provision as a reason for the Department to discontinue a provider agreement.

Ms. Hammon informed the Committee there is a fiscal impact. The Department presented a two-year funding plan to the Joint Finance and Appropriations Committee (JFAC) in 2016 that addressed multiple changes to the ICCP program, including the impact of the rule changes. The Administration for Children and Families modified the State's child care allocations to help cover the cost of the changes, and the increase in federal spending was addressed last year during the JFAC hearings. The Department provided a public comment period for providers and citizens in February 2016 and created a web page devoted to this docket to inform providers and citizens of all upcoming changes. The Department conducted negotiated rulemaking in six cities throughout Idaho in June 2016. Providers were invited to attend to learn about the upcoming changes and provide insight to the draft ICCP rules. More than 150 people attended, and 15 provided feedback, all in support of the changes.

Chairman Heider asked whether the 2016 JFAC appropriation was for one or two years. **Ms. Hammon** responded it was a two-year appropriation and continues for 2017. The Department will also present to JFAC regarding additional funding for changes to the program.

Senator Martin inquired what effect Section 104.06 pertaining to citizenship or alien status will have. **Ms. Hammon** answered the Department looks at household size to determine what income limit to apply. When someone in the household is not lawfully in the U.S., that person is not included in the count for family size, but the person's income is counted as part of the total income for the family. **Senator Martin** asked how this would affect the family. **Ms. Hammon** replied it could result in the family being over income. **Chairman Heider** asked for clarification on the term "lawfully." **Ms. Hammon** answered anyone who is in the U.S. lawfully is eligible for the program. It could be a lawful permanent resident or someone on a student visa. An undocumented person who did not have the right to be present in the U.S. would not be eligible.

Senator Lee asked whether the amount of the one-time registration fee in Section 500.02 is the previous fee that was simply placed in rule. **Ms. Hammon** answered there was previously no set fee, and the Department was receiving one-time registration fees in multiple dollar amounts. The Department determined a reasonable one-time registration fee and added it to rule.

Senator Lee inquired where someone could find the local market rate and triennial survey of provider payments referenced in Section 502a. **Ms. Hammon** responded the Department contracts with IdahoSTARS to maintain that information. IdahoSTARS contacts all registered child care providers every quarter to obtain availability for spots and the amount each provider charges. **Senator Lee** asked how a provider or consumer would know to get the information from IdahoSTARS. **Ms. Hammon** replied the providers work directly with IdahoSTARS so they know where to find the information.

Senator Agenbroad asked about the difference between "countable income" and "income" used in various sections and whether the terminology should be consistent throughout the rule. **Ms. Hammon** answered "countable income" is the income used to determine eligibility. Section 072 provides a list of excluded income that is not included in "countable income" for eligibility determination. **Senator Agenbroad** asked for clarification if both countable income and income are used for eligibility. **Ms. Hammon** explained the Department first looks at countable income and that is what is used for income determination. **Senator Agenbroad** pointed out Section 070.01 uses the term "income" and asked if it would be appropriate to state "countable income" in that section. **Ms. Hammon** answered it would be correct. It should say "countable" and will be changed. **Senator Jordan** stated it might be correct as written and explained her understanding that the section referencing "federal poverty guidelines" is not specific to a particular program, while the program rules make decisions about what is counted income. **Ms. Hammon** provided an example of a family of two for which the federal poverty limit is \$1,736. For the ICCP, all countable income is used to determine eligibility. If the family's countable income was \$1,700, and they had \$100 of excluded income such as a travel reimbursement, the family would be eligible for the program.

Senator Lee asked whether the \$250 one-time registration fee was a State decision or a federal requirement. **Ms. Hammon** answered the \$250 fee was a State decision and was not part of the federal reauthorization. **Senator Lee** inquired which of the proposed changes were discretionary State decisions and which changes were made to conform to federal law.

Ms. Hammon identified the docket sections containing changes related to federal re-authorization: 1.) all changes on page 129; 2.) page 131, Sections 011.11 and 070.02; 3.) page 132, Section 070.03; 4.) page 135, Section 078; 5.) page 137, Sections 105.03.a, 105.03.b., and 200.02.a; 6.) page 138, Sections 202 and 500.02; 7.) page 139, Section 502.01.a; 8.) page 140, Section 503; 9.) page 141, Sections 600.04.b, 602.01, and 602.02; 10.) page 143, Sections 801, 802, and 802.04; 11.) all changes on page 144; 12.) page 145, Sections 803, 804, and 805; and 13.) all changes on page 146.

Ms. Hammon specified the docket sections containing State discretionary changes: 1.) all changes on page 130; 2.) page 131, Sections 070 and 070.01; 3.) page 132, Section 072.06; 4.) page 133, Sections 072.17 and 073; 5.) page 135, Section 103.03.a; 6.) all changes on page 136; 7.) page 137, Sections 105.103, 200.02.a, 200.02.b, 200.03.b., and 200.03.c; 8.) page 138, Section 401.02; 9.) page 139, all changes in Section 501; 10.) page 140, Section 807; 11.) all changes on page 142; and 12.) page 145, Section 807.

Senator Martin asked how many attended the public hearing. **Ms. Hammon** responded 150 people attended and 15 provided comments, all in favor of the new rules. **Senator Martin** asked if it is common to have such a high number of attendees. **Ms. Hammon** replied it was more than usual. Ericka Rupp did a lot of outreach to ensure all providers knew about the changes and obtain their feedback.

Senator Harris asked about the disaster and emergency planning section and who provides these documented policies and procedures. **Ms. Hammon** answered IdahoSTARS works with all providers and helps them with all aspects of their business. IdahoSTARS provides coaching and mentoring to develop that plan and has example plans for them to use.

MOTION:

Senator Jordan moved to approve **Docket 16-1612-1601**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0506-1602**

Criminal History and Background Checks. **Fernando Castro** introduced himself to the Committee as supervisor of the Criminal History Unit (CHU) in the Department's Bureau of Audits and Investigations. The CHU completes nearly 25,000 background checks a year to help the Department protect vulnerable citizens from harm by screening employees of providers and individuals who participate in certain Department programs such as foster care, adoption, and certified family homes (see Attachment 1). Each year about 300 applicants, representing fewer than one percent of applicants, are denied or voluntarily withdraw from background checks because of disqualifying elements. The reauthorization of the Child Care and Development Block Grant of 2014 included some new standards for background checks for child care workers that become effective September 30, 2017. This docket will bring the Department's rules into compliance with federal law.

Mr. Castro informed the Committee the rulemaking process started in February 2015 and concluded in September 2016. CHU identified changes to its processes that would be necessary to meet the federal requirements and determined appropriate rule language. Because the changes were significant, CHU engaged internal and external stakeholders as early as possible. CHU held both negotiated and proposed rulemaking public meetings in Spring and Fall 2016. For those who could not meet in person, CHU disseminated a survey discussing the substance of the changes. This docket is the result of reviewing comments to the rule and the survey results.

Mr. Castro said there are two major changes in the proposed rule affecting background checks for child care staff: 1.) the addition of a separate enhanced set of criteria for passing or failing the background check; and 2.) the ability for the Department to collect from the applicants any additional third party fees that would be paid by the Department to external agencies because of the enhanced background check requirements.

Mr. Castro stated the rule requires an enhanced clearance process for childcare providers and allows an enhanced clearance for others who have agreed to be screened to the higher standard. The enhanced clearance: 1.) requires CHU to disqualify an applicant for the conviction of any crime where a child is a victim; 2.) updates the list of disqualifying crimes; and 3.) requires CHU to obtain additional crime and child protection information from any place where the applicant has lived in the past five years. This is necessary because some criminal offenses and child protection actions are not reported to the Federal Bureau of Investigation, and CHU must learn about unreported events to determine the fitness of the applicant. Some agencies charge a fee for obtaining this additional information. To keep the current cost of the background check as low as possible, the rule authorizes the Department to collect the additional fees required to process the enhanced clearance. CHU expects these costs to be minimal.

Mr. Castro explained with the two types of Department clearances, background check portability will be limited. Applicants cleared to the enhanced standard will still be able to use their background checks without restriction with other employers if allowed by rule. However, applicants not cleared to the enhanced standard will have clearance portability only with employers that do not require the enhanced clearance.

Mr. Castro advised the docket includes additional updates and clarifications. In addition to adding the disqualifying crimes required by the Child Care and Development Block Grant, the rule changes ensure specific disqualifiers match current Idaho Code. Department providers requested that procedures and compliance expectations be clarified, and this docket accomplishes that goal. During the rulemaking process, the Department was pleasantly surprised that some providers voluntarily chose to adopt the enhanced clearance standard. All categories of applicants that will undergo the enhanced clearance process are listed in Section 126 of the docket, including some that are not childcare providers.

Senator Foreman asked about the dollar amount of third-party fees applicants might be required to pay. **Mr. Castro** responded CHU surveyed all states that charge fees, and nine states charge a fee to obtain information from the Child Protection Registry. Idaho charges \$20, and the other states' fees range from \$8 to \$28.

Senator Lee asked why operating a certified family home without certification rises to the same level as other disqualifying offenses. **Mr. Castro** answered the disqualifier was included at the request of the Certified Family Home program because people who were convicted of a violation in that program should not be allowed to participate in other programs. The enhanced background clearance allows people to go more easily from one place of employment to another.

MOTION:

Senator Lee moved to approve **Docket No. 16-0506-1602**. **Senator Foreman** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0506-1601**

Criminal History and Background Checks. **Fernando Castro** presented the docket on behalf of the Bureau of Audits and Investigations. The 2016 Legislature approved changes to other Department rules pertaining to requirements for background checks for the Division of Public Health, Emergency Medical Services Bureau, and the Division of Behavioral Health. This docket deletes or rearranges references for conformity with those rules and to ensure CHU has authority to conduct the background checks.

MOTION: **Senator Harris** moved to approve **Docket 16-0506-1601**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Chairman Heider** adjourned the meeting at 3:52 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary