

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 11, 2018

TIME: 3:00 P.M.

PLACE: Room WW54

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

ABSENT/ EXCUSED: Vice Chairman Souza, Senators Martin, Potts

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 Health and Welfare Committee (Committee) to order at 3:01 p.m.

GUBERNATORIAL APPOINTMENT: **Consideration of Gubernatorial Reappointment of Michael Gibson to the Idaho Commission for the Blind and Visually Impaired (ICBVI).** **Chairman Heider** introduced Michael Gibson and asked him to tell the Committee about himself and why he would like to be reappointed to the ICBVI. **Michael Gibson** stated that he has served on the ICBVI for three years. He previously worked in a vocational rehabilitation training center in Colorado, where he assisted blind and visually impaired adults learn to live independently.

Mr. Gibson also worked with a variety of government agencies to provide accommodative technology to blind and visually impaired individuals of all ages. He is now employed by the Disability Services Office at Boise State University.

Mr. Gibson expressed that the common thread in his work history has been the importance of building personal relationships. Throughout his jobs, **Mr. Gibson** sought to create opportunities and remove barriers to access to information for the blind and visually impaired.

Mr. Gibson detailed the progress that the ICBVI has made in recent years. In fiscal year (FY) 2013, the ICBVI served 1,660 Idahoans; in FY 2016, it served 2,055. In FY 2017, ICBVI assisted 72 blind or visually impaired Idahoans gain employment, with an average hourly wage of \$16.14. **Mr. Gibson** asserted that the number of blind or visually impaired Idahoans is growing, especially among the elderly.

In 2017, the ICBVI served 712 Idahoans over the age of 55 and instructed them how to live independently. The ICBVI also provided 376 Idahoans with one-time services. **Mr. Gibson** stated that the ICBVI is also serving an increasing number of low-vision individuals. In 2017, the ICBVI served 452 Idahoans in its low-vision clinic. **Mr. Gibson** shared that the ICBVI restored the vision of 57 Idahoans in 2017.

Chairman Heider thanked Mr. Gibson for attending the meeting and commended him for his work.

Senator Lee asked Mr. Gibson if there were any challenges facing the ICBVI in the next year that the Committee could address or of which the Committee should be aware. **Mr. Gibson** responded that the ICBVI's biggest challenge now

is providing services for the aging blind because it is the fastest growing group of individuals losing their eyesight. He stated that several years ago the legislature provided funding for the ICBVI to hire an additional home teaching assistant to aid the elderly blind. However, the number of blind and visually impaired elderly individuals is continuing to grow at a rapid rate.

Mr. Gibson explained that another challenge facing the ICBVI are the requirements and regulations of the Workforce Innovation and Opportunity Act and pre-employment transition services. These require the ICBVI to collaborate with other agencies to ensure that transition-age young adults are receiving the services and information that they need in order to choose whether to enter the workforce or continue their education.

MOTION:

There being no more questions, **Senator Jordan** moved to send the Gubernatorial appointment of Michael Gibson to the Idaho Commission for the Blind and Visually Impaired to the floor with recommendation that he be confirmed by the Senate. **Senator Lee** seconded the motion. The motion carried by **voice vote**. **Senator Agenbroad** will carry the appointment on the floor of the Senate.

**DOCKET NO.
16-0507-1701**

Rules of the Department of Health and Welfare Relating to the Investigation and Enforcement of Fraud, Abuse, and Misconduct. **Lori Stiles**, Manager of the Medicaid Program Integrity Unit of the Bureau of Audits and Investigations in the Idaho Department of Health and Welfare, presented this docket. **Ms. Stiles** explained that the Medicaid Program Integrity Unit (Unit) has 17 full-time staff members that audit Medicaid providers to ensure compliance with rules and regulations. In FY 2017, the Unit completed 485 audits, identified nearly \$8.4 million in overpayments and penalties, and recovered over \$7.3 million. **Ms. Stiles** stated that when enrolling in Medicaid, providers are required to disclose information about individuals and entities that have an ownership interest that exceeds a certain percentage. Previously, this percentage was listed as 25 percent, but the first amendment in this rule docket changes the amount to 5 percent, in order to comply with federal and state regulations. Ownership information is used to prevent individuals from participation in Medicaid as a provider.

Ms. Stiles stated that the second amendment in this docket reinstates the Unit's ability to suspend payment prior to written notification. The ability to suspend payments without first notifying the provider was added to the Idaho Administrative Code (IDAPA) in 2004. In 2014, IDAPA 16.05.07.210 was amended to add the ability to suspend payment to all public assistance providers. When the rule was amended, it was inadvertently changed to state the Department would not withhold payments without first notifying the provider. The word "not" was intended to apply to non-Medicaid providers such as Idaho Child Care Providers, but not to Medicaid providers.

Suspending payment prior to notification aligns with 42 C.F.R. § 455.23, which mandates that state Medicaid agencies suspend all Medicaid payments to a provider after the agency determines there is a credible allegation of fraud for which an investigation is pending under the Medicaid program. States may suspend payments without first notifying the provider of its intention to do so. Providers are notified within five days of payment suspension, unless a law enforcement agency requests temporarily withholding of such notice. This amendment removes the word "not" from the rule and clarifies that non-Medicaid providers will receive written notice prior to payment suspension.

Senator Agenbroad requested more information about the ownership percentage change. **Ms. Stiles** explained that the percent listed in the rule was

changed to reflect a change in federal regulations.

Senator Harris asked Ms. Stiles why the Unit would not notify the provider before suspending payments. **Ms. Stiles** stated that the Department of Health and Welfare and the federal government want to suspend payments as soon as there is a suspicion of fraud in order to prevent further financial losses.

Senator Lee asked why Medicaid providers do not have to receive prior notice of payment suspension while non-Medicaid providers do. She inquired if this was because Medicaid providers generally deal with larger sums of money than non-Medicaid providers. **Ms. Stiles** responded that Senator Lee was correct.

MOTION: There being no more questions or testimony, **Senator Jordan** moved to approved **Docket No. 16-0507-1701**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 19-0101-1701 **Rules of the Idaho State Board of Dentistry.** **Susan Miller**, Executive Director of the Idaho State Board of Dentistry (Board of Dentistry), presented this docket. **Ms. Miller** stated that the Board of Dentistry recently discovered that substantive text was omitted from publication in the administrative bulletin. **Ms. Miller** requested that the Committee reject the rule due to the error. She explained that the Board of Dentistry will adopt a temporary rule until the text can be republished for the 2019 Legislative Session.

Senator Agenbroad asked whether a temporary rule could be put into effect during the legislative session or if it would be necessary to wait until the conclusion of the 2018 Legislative Session. **Ms. Miller** deferred the question to **Dennis Stevenson**, Administrative Rules Coordinator. **Mr. Stevenson** specified that temporary rules may be adopted during the legislative session and clarified that the rule moratorium only applies to proposed rules.

MOTION: There being no more questions or testimony, **Senator Lee** moved to reject **Docket No. 19-0101-1701**. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 19-0101-1702 **Rules of the Idaho State Board of Dentistry.** **Ms. Miller** explained that this rule: 1.) clarifies the requirement for acceptance of clinical examination results and criteria; 2.) updates language in the permitted duties of a dental assistant; and 3.) simplifies the language regarding prescription drugs in the unprofessional conduct rules. The Board of Dentistry conducted negotiated rulemaking for these amendments. No hearings were requested or held, and no written comments were received. **Ms. Miller** stated that the revisions are supported by both the Idaho State Dental Association and the Idaho Dental Hygienists' Association.

Senator Jordan asked why the Board of Dentistry changed the language in the unprofessional conduct rules from "controlled substances" to "prescription drugs." **Ms. Miller** noted that some dentists had been prescribing non-controlled substances outside the scope of their license. The Board of Dentistry changed the language in the rule to make clear that dentists should only be prescribing medication within the scope of their license, whether controlled or non-controlled.

MOTION: There being no more questions or testimony, **Senator Foreman** moved to approved **Docket No. 19-0101-1702**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

Rules of the Idaho State Board of Dentistry. **Ms. Miller** stated that this docket relates to volunteer dental hygiene services and dental hygiene license endorsements. In this rule, the Board of Dentistry replaced the word "program" with the word "setting." Dental hygienists who volunteer their time or those who hold an extended access license endorsement are authorized to practice in non-traditional settings, which are not necessarily tied to specific programs. **Ms. Miller** asserted that the word "setting" as opposed to "program" is therefore more fitting. The Board of Dentistry also added a requirement for written orders by the dentist for dental hygiene services. This increases accountability between supervising dentists and dental hygienists.

Ms. Miller explained that this docket also contains a new section which sets parameters for teledental services. Authorization for this rulemaking is found in the Idaho Telehealth Access Act. The Board of Dentistry formed a workgroup comprised of representatives from various agencies to develop this rule. The rule was modeled after the Idaho State Board of Medicine's telehealth rules, with the additional requirement that the dentist providing telehealth services physically practice within seventy-five miles of the patient's location.

The consensus of the workgroup and members of the Board of Dentistry was that a geographic restriction is necessary for the public's protection in teledental practice because the practice of dentistry greatly differs from the practice of medicine. In determining the proposed mileage radius, the workgroup looked for a reasonable travel time/distance between the patient, who may be in a rural location, and the dentist who is diagnosing, prescribing, and supervising a dental hygienist from a remote location.

The group looked to the Idaho Medicaid contract, which requires that contractors provide an adequate number of dentists in the network such that 90 percent of the members have a choice of providers within 30 miles for urban areas, and 60 miles for rural areas. They also looked to the American Dental Association's Health Policy Institute data; that data indicated that 90 percent of Idaho's population live with 15 minutes of a dentist. The workgroup concluded that that the 75-mile radius was currently an appropriate parameter.

The Board of Dentistry is willing to revisit the mileage radius requirement in the future. The Board of Dentistry published a negotiated rulemaking notice on these amendments. No hearings were requested or held, and written comments were considered. **Ms. Miller** stated that the revisions are supported by all who participated in the workgroup.

Chairman Heider requested a description of how teledental practice works. **Ms. Miller** explained that teledental practice involves the use of live video between a dental hygienist in a remote location and a dentist. The dentist supervises and directs treatment, with the help of the auxiliary staff member in the patient's location. If the supervising dentist determines that the patient needs to see a dentist in person, there will be one within 75 miles of the patient's location. **Chairman Heider** asked if the live video feed will be of sufficient quality for a supervising dentist to adequately evaluate the situation. **Ms. Miller** responded that the video quality is adequate. She also mentioned that a dentist can request to see the patient in person, if necessary.

Senator Harris asked if the Board of Dentistry had received any written comments expressing concern about the 75-mile radius requirement. **Ms. Miller** stated that the Board of Dentistry only received one comment from a group that had a question about the requirement. The group inquired why the Board of

Dentistry was imposing a mileage requirement when there is no comparable restriction on telemedicine. The Board of Dentistry responded by explaining their previously discussed reasoning.

TESTIMONY:

Chairman Heider invited testimony.

Francoise Cleveland introduced herself as the Associate State Director of Advocacy for AARP Idaho; she stated that she spoke on behalf of the 186,000 AARP members in Idaho. **Ms. Cleveland** stated that AARP Idaho supports telehealth, but had concerns about the docket. She noted that telehealth can reduce transportation barriers and improve patient outcomes and access to care. She commended the Board of Dentistry in its effort to support teledentistry in Idaho.

In July, AARP requested entrance into negotiated rulemaking with the Board of Dentistry regarding the 75-mile teledentistry restriction. **Ms. Cleveland** asserted that the mileage requirement undermines the intent of telehealth and the legislative findings of the Idaho Telehealth Access Act. The Board of Dentistry denied AARP's request for negotiated rulemaking. The Board of Dentistry stated that the practice of teledentistry differs from that of telemedicine, and therefore the mileage restriction was appropriate. AARP then requested further information. The Board of Dentistry explained that dentists need to be within a reasonable distance of their patients in the event that a patient requires treatment outside the scope of a dental hygienist's licensure.

Ms. Cleveland stated that teledentistry can be used for face-to-face consultations via videoconferencing, sharing images and records among providers, obtaining second opinions, educating and diagnosing patients, preventative care, specialist consultations, and continuity of care. **Ms. Cleveland** noted that articles she read listed schools, Native American reservations, and senior living facilities as successful examples of teledentistry.

AARP obtained the Board of Dentistry's mailing list of all licensed dentists in Idaho. AARP then plotted the locations of the dentists on a map (see attachment #1). **Ms. Cleveland** asserted that many individuals in Idaho's rural areas must travel long distances to see a dentist. She noted that this docket's 75-mile restriction refers to 75 linear miles, and that there are many areas in Idaho where 75 linear miles would be many more miles by road. **Ms. Cleveland** cited that rural Americans have a higher risk of tooth decay and decreased access to dentists who accept Medicaid. Rural Americans are also more likely to visit emergency departments for oral health care needs.

Ms. Cleveland noted that only six states currently impose geographic restrictions on telehealth. She expressed concern that the restriction could influence other health-related administrative rules in the future. She stated that the restriction would limit access to dental care and would reduce patients' freedom of choice when selecting a dentist. **Ms. Cleveland** requested that the Committee reject this docket.

Senator Lee clarified that if the Committee rejected the docket, teledentistry practices would be suspended for an entire year, until the rule again came before Committee. She noted that the rule, if approved, could still be revisited in the 2019 Legislative Session. She asked if Ms. Cleveland was suggesting that it would be better to reject the rule, and therefore have no teledentistry practices for an entire year, rather than accept the rule, observe the results, and revisit the issue of geographic restriction in 2019.

Senator Lee asked if Ms. Cleveland thought rural communities would be better served by not having teledentistry at all, or by being subject to the 75-mile teledentistry restriction. **Ms. Cleveland** responded that AARP's concern was the precedent that this docket would create. She explained that boards and agencies often model their rules after the rules of other agencies, and therefore she worried that the geographic restriction would be implemented in other areas of telehealth.

Ms. Cleveland also noted that there was no guarantee that the Board of Dentistry would revisit the rule in the future. She restated her support for the rejection of the rule. **Chairman Heider** stated that the Committee was attempting to expand telehealth in Idaho and expressed concern that rejecting the rule would suspend the practice of teledentistry for an entire year.

Elizabeth Criner introduced herself and spoke on behalf of the Idaho State Dental Association. She explained that teledentistry is a relatively new concept. She emphasized the importance of ensuring that teledental care is implemented in a way that preserves and protects the quality of patient care.

Ms. Criner noted that 90 percent of Idahoans live within 15 minutes of a dentist. She explained that a teledental patient's proximity to a dentist is important, as the patient may develop a condition that requires seeing a dentist in person.

The 75-mile restriction ensures that the patient has access to a dentist within a reasonable distance. **Ms. Criner** stated that the restriction still maintains the patient's freedom of choice. She also explained that the rule could be revisited as the practice of teledentistry expands.

Senator Agenbroad asked if the rulemakers considered allowing patients who move to a location more than 75 miles from their dentist to continue to see that dentist through a teledental practice. **Ms. Criner** stated that she did not participate personally in the development of the rule. She also noted that the supervising dentist and the on-site hygienist are liable for the patient's care; therefore, dentists will likely seek to open teledental practices in the rural areas near their own location.

Ms. Criner referred Senator Agenbroad's question to **Linda Swanstrom**, Executive Director for the Idaho State Dental Association. **Ms. Swanstrom** affirmed that the rulemakers considered the scenario in which a patient moves more than 75 miles from his or her primary dentist. She explained that a dentist cannot operate a teledental practice more than 75 miles from his or her location. Patients can choose to keep their primary dentist, even if the dentist is more than 75 miles away; however, the dentist cannot operate a teledental practice that violates the geographic restriction.

Senator Jordan clarified that the Board of Dentistry decided on a 75-mile restriction as a conservative threshold to the implementation of teledentistry in Idaho. She asked if Ms. Swanstrom felt that it was the Board of Dentistry's intention to reevaluate the distance restriction from year-to-year. **Ms. Swanstrom** responded in the affirmative. She stated that the Board of Dentistry felt it was important to put protections in place as teledentistry begins to expand.

Jen Kirkham introduced herself as a representative of the Idaho Dental Hygienists' Association and stated that she participated in the collaborative process of developing this docket. She asserted that the Idaho Dental Hygienists' Association supports this docket and finds the 75-mile restriction to be reasonable and correct, based upon scientific evidence about the importance of oral health.

Ms. Miller clarified that the Board of Dentistry is unlikely to revisit the 75-mile restriction in 2019. She explained that the rulemaking process for the subsequent year begins early; as such, the Board of Dentistry would not have sufficient data about the effectiveness of the geographic restriction to determine its suitability. She stated that she did not expect to present the topic again for two years.

Senator Lee expressed her appreciation for the Board of Dentistry's willingness to work with the committee to address constituent concerns. She noted that she expects the Board of Dentistry to eventually return to the Committee to propose further expansions of telehealth.

MOTION: There being no more questions or testimony, **Senator Foreman** moved to approve **Docket No. 19-0101-1703**. **Senator Lee** seconded the motion. **Senator Harris** voiced his opposition to the 75-mile limit, but stated that he supports telehealth and would therefore support this docket. The motion carried by **voice vote**.

ADJOURNED: There being no further business, **Chairman Heider** adjourned the meeting at 4:07 p.m.

Senator Heider
Chair

Rachel Goodman
Secretary