

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, January 25, 2018

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Agenbroad, Potts, and Jordan

ABSENT/ EXCUSED: Senator Foreman

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.

RS 25640 **Relating to Education Requirements for Board of Nursing (BON) Board Members.** **Sandra Evans** introduced herself as the Executive Director of the BON. **Ms. Evans** explained that Idaho Code defines the qualifications for the BON's nine appointed members. The BON must include one advanced practice registered nurse, five registered nurses (RNs), two licensed practical nurses, and one consumer. Each BON member must be a United States citizen and Idaho resident. Licensed members must be actively engaged in some field of nursing in Idaho at the time of appointment. RNs on the BON must meet certain academic requirements. **RS 25640** would eliminate these unique educational requirements for the RN members of the BON. **Ms. Evans** stated that the change would remove an unnecessary barrier that may preclude otherwise qualified licensees from BON membership. It would also alleviate the perception that the BON discourages continuous education for RN members. **Ms. Evans** noted that **RS 25640** would have no fiscal impact.

MOTION: There being no testimony or questions, **Senator Martin** moved to send **RS 25640** to print. **Vice Chairman Souza** seconded the motion. **Senator Martin** noted that he had questions about **RS 25640**, but he would save them for the hearing. The motion carried by **voice vote**.

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

DOCKET NO. 16-0417-1702 **Rules Governing Residential Habilitation Agencies.** **Eric Brown** introduced himself as a Program Manager in the Division of Licensing and Certification within the Idaho Department of Health and Welfare (DHW). He explained that his team certifies agencies that provide residential habilitation services to adults with disabilities. There are currently 69 certified residential habilitation agencies operating 107 office locations throughout Idaho. The agencies collectively serve approximately 1,300 Idahoans.

Mr. Brown explained that this docket seeks to revise IDAPA 16.04.07, which has not been updated in several years. Proposed changes include: 1.) the addition of details relating to the application requirements for new agencies seeking certification; 2.) the incorporation of staff qualification requirements found in IDAPA 16.03.10; 3.) the clarification of documentation and training requirements for agency staff; 4.) the addition of language regarding how an agency handles participants' medications; and 5.) the alteration of reporting requirements, which

reduces the number of reportable incidents and extends the deadline for submitting incident reports.

Negotiated rulemaking was conducted, and the Division of Licensing and Certification made changes in response to comments received. This docket was intended to be cost-neutral for the affected agencies.

Senator Harris sought more information regarding the comments received during the rulemaking process. **Mr. Brown** stated that the negotiated rulemaking process was a collaborative effort. He noted that the relevant agencies provided constructive comments that were incorporated into this docket. **Vice Chairman Souza** asked if the rulemakers received any comments opposing the rules. She also asked if the rulemakers made changes to rules based upon concerns expressed in those comments. **Mr. Brown** explained that the Division of Licensing and Certification documented all comments received; substantial changes were made based on the comments. Because the changes were significant, the Division of Licensing and Certification chose to utilize a repeal-and-replace method when revising the rules.

Senator Potts expressed concern that he could not properly evaluate this docket because the format did not clearly indicate which rules had been changed. He noted that the rule contained a small amount of red text, indicating new language; otherwise, there was no clear indication of which sections had been changed. **Mr. Brown** noted that he had access to a working copy of this docket, which displayed all changes. He offered to supply the Committee with that copy in the future. He explained that the red sections in this docket indicated changes made after the rules were posted in the administrative bulletin.

Vice Chairman Souza explained that proposed rules which are repealed and replaced do not contain underlines or strikethroughs indicating rule changes. She noted that this is confusing for the Committee.

MOTION: **Senator Potts** moved to table **Docket No. 16-0417-1702**. The motion failed for lack of a second.

SUBSTITUTE MOTION: **Chairman Heider** moved to approve **Docket No. 16-0417-1702**. **Senator Martin** seconded the motion. **Senator Potts** mentioned he was concerned about consistency among Senate committees; he noted that other committees would not approve a rule without having a clear understanding of the rule changes.

Christine Pisani approached the podium and informed the Committee that members of the audience wished to give testimony. **Chairman Heider** withdrew his motion.

TESTIMONY: **Becky Baily** introduced herself as the President of the Idaho Association of Community Providers (IACP). IACP is a statewide organization that connects behavioral health providers, case management services, developmental disability services, supported-living services, and residential habilitation providers. **Ms. Baily** stated that IACP supported **Docket No. 16-0417-1702**. She noted that the Division of Licensing and Certification partnered with IACP and other stakeholders to develop the rules.

Toni Brinegar introduced herself as a Program Specialist for the Idaho Council on Developmental Disabilities (ICDD), which advocates for Idahoans with developmental disabilities. She asserted that ICDD supported this docket. Over 1,000 individuals have chosen to live in a residential habilitation facility since the service began in 1995. **Ms. Brinegar** noted that the ICDD established a collaborative work group called Community NOW!, which included DHW, the American Civil Liberties Union (ACLU), and the Attorney General's Office. The

Community NOW! group generated 17 recommendations for improving support for adults with developmental disabilities. **Ms. Brinegar** explained how this docket aligns with the recommendations presented in the Community NOW! report (see Attachment 1).

MOTION: There being no more questions or testimony, **Chairman Heider** moved to approve **Docket No. 16-0471-1702**. **Senator Martin** seconded the motion. The motion carried by **voice vote**, with **Senator Potts** voting **nay**.

DOCKET NO. 16-0417-1701 **Rules Governing Residential Habilitation Agencies**. **Mr. Brown** explained that this docket would repeal the set of rules being replaced by **Docket No. 16-0417-1702**.

Chairman Heider asked if Mr. Brown heard any concerns during the public hearings held for this docket. **Mr. Brown** stated that no one expressed concern at the public hearings. He mentioned that some changes were made based upon comments received after the hearings.

MOTION: There being no more questions or testimony, **Senator Martin** moved to approve **Docket No. 16-0417-1701**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0310-1707 **Rules Relating to Medicaid Enhanced Plan Benefits**. **Arthur Evans** introduced himself as the Bureau Chief for Developmental Disability Services in the Division of Medicaid within the Idaho Department of Health and Welfare. Under a court-approved settlement agreement, DHW is implementing the use of a new developmental disability assessment tool. The new tool will replace the Scales of Independent Behavior-Revised (SIB-R) assessment tool.

Mr. Evans noted that SIB-R is offensive to adults with disabilities, outdated, and based upon participant deficiencies instead of strengths. DHW uses assessment tools to determine developmental disability eligibility for services. This docket would remove all references to the SIB-R assessment tool from the rules. The proposed changes would define a DHW-approved assessment tool as any standardized assessment tool approved by DHW for use in determining developmental disability eligibility.

Mr. Evans explained that the fiscal impact to the General Fund would be \$261,355. This cost was included in the fiscal year (FY) 2018 budget approved by the 2017 Legislature. He noted that no negotiated rulemaking was held, but the selection of a new assessment tool was a collaborative process that included adults with development disabilities and other stakeholders.

Senator Jordan commended Mr. Evans for collaborating with stakeholders when selecting a new assessment tool. She asked if this collaborative process was included in the rules so that future selection processes would be collaborative as well. **Mr. Evans** stated that it was not included in the rules. He explained that Developmental Disabilities Services worked diligently to build a collaborative process, but did not consider incorporating it into the rules.

Senator Lee expressed concern that the proposed rules do not name a specific DHW-approved assessment tool. She asked where agencies could find the approved assessment tool, if not in the rules. She also inquired as to why DHW did not identify a specific assessment tool in the proposed rules. **Mr. Evans** explained that assessment tools are constantly updated. By not including a specific assessment tool in the proposed rules, DHW could ensure that providers use the most current assessment tool. He noted that approved assessment tools will be included in DHW handbooks. **Senator Lee** stated that agencies can change their

rules annually. She asked why DHW did not include the assessment tool in rule, and submit proposed rule changes to the Legislature each year. **Mr. Evans** felt that not including the assessment tool was the best option. He noted that DHW went through an arduous process to select the new assessment tool.

Vice Chairman Souza asked if the approved assessment tool is listed on the DHW website. **Mr. Evans** responded in the affirmative. He stated that the new tool is the Supports Intensity Scale-Adult (SIS-A). He explained that many stakeholders collaborated to select the SIS-A as the new tool.

TESTIMONY: **Ms. Pisani** introduced herself as the Executive Director of ICDD. She noted that DHW developed a website for adults with developmental disabilities, which contains information regarding the SIS-A. She stated that DHW supported this docket because it would replace the SIB-R, an archaic and offensive assessment tool. **Ms. Pisani** expressed support for the SIS-A assessment tool.

Senator Lee again expressed concern that the SIS-A is not included in the proposed rules. She asked why DHW could not update the assessment tool annually by rulemaking. **Ms. Pisani** stated that she would appreciate having the assessment tool and the collaborative selection process in the rule.

MOTION: There being no more questions or testimony, **Senator Harris** moved to approve **Docket No. 16-0310-1707**. **Chairman Heider** seconded the motion. **Senator Lee** noted that she would like DHW to specify a particular developmental disability assessment tool in the rules in the future. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1704 **Rules Relating to Medicaid Basic Plan Benefits.** **Mr. Evans** stated that this docket would remove the incorporation by reference of the SIB-R Comprehensive Manual.

MOTION: There being no more questions or testimony, **Senator Martin** moved to approve **Docket No. 16-0309-1704**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 16-0309-1701 **Rules Relating to Medicaid Basic Plan Benefits.** **Mr. Evans** explained that this docket addresses Medicaid payments to schools. Under the Individuals with Disabilities Education Act (IDEA), schools are required to immediately provide services identified on an Individual Education Plan (IEP). However, Medicaid does not reimburse schools for those services until the IEP is signed by a physician. The proposed rules allows schools to retroactively bill for services, up to 30 days, once they receive a recommendation for a Medicaid-reimbursable service. Negotiated rulemaking was conducted; DHW considered all comments received.

Chairman Heider commended Mr. Evans for his collaborative efforts.

Senator Harris asked why there is a 30-day limit for retroactive billing. **Mr. Evans** explained that the average time delay between identifying the need for services and obtaining a physician's signature was two weeks; therefore, 30 days is an appropriate time frame.

TESTIMONY: **Karen Echeverria** introduced herself as the Executive Director of the Idaho School Boards Association. She also spoke on behalf of the Idaho Association of School Administrators. She stated that the associations support this docket.

Senator Lee commended the DHW and Idaho school districts for their collaborative work.

MOTION: There being no more questions or testimony, **Senator Martin** moved to approve **Docket No. 16-0309-1701**. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
16-0310-1705**

Rules Relating to Medicaid Enhanced Plan Benefits. **Mr. Evans** stated that this docket adjusts existing processes to comply with the class-action settlement of *K.W. v. Armstrong*. The proposed rule would allow all developmental disability waiver participants to pursue an exception review for budget modification. The review would be based on documented health or safety needs not otherwise identified in their assessment. Current rule only allows waiver participants receiving high or intense level of care to seek budget modifications through the exception review. Currently, those participants not on a high or intense level of care must go through the appeals process for a budget modification based on health or safety. **Mr. Evans** stated that the appeals process is burdensome for DHW and the participant. The exception review has well-defined guidelines that facilitate an expedited and better-functioning process.

Senator Martin noted that the word "and" was replaced with "or" in paragraph 515.03.a of this rule docket. He asked if DHW was allowing something unsafe by changing the word. **Mr. Evans** explained that the change allows budget modification if there is a safety issue, health issue, or both.

MOTION:

There being no more questions or testimony, **Chairman Heider** moved to approve **Docket No. 16-0310-1705**. **Senator Lee** 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, **Chairman Heider** adjourned the meeting at 4:07 p.m.

Senator Heider
Chair

Rachel Goodman
Secretary