

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, January 31, 2018

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Agenbroad, Foreman, Potts, 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 & Welfare Committee (Committee) to order at 3:00 p.m.

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

RS 25980 **Patient Caregiver Support Act.** **Chairman Heider** presented **RS 25980**, which concerns when patients enter and exit the hospital. A designated caregiver should be designated for any patient admitted and, upon discharge from hospital, should be given any relevant information. If the caregiver is not able to be contacted, the hospital is not liable. This change will have no fiscal impact.

DISCUSSION: **Senator Potts** requested clarification as to the problem this bill is meant to solve. **Chairman Heider** stated the problem does not often arise, but some do not have family members to care for them. This will clarify who is their caregiver.

MOTION: **Senator Martin** moved to send **RS 25980** to print. **Senator Jordan** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 16-0310-1706 **Medicaid Enhanced Plan Benefits.** **George Gutierrez**, Deputy Administrator for Division of Medicaid, Idaho Department of Health & Welfare, discussed the Idaho Youth Empowerment Services (YES) program. He explained that YES is an ongoing collaborative effort to implement a new system of care for children and youth with serious emotional disturbances. This system of care is the result of the settlement agreement in the *Jeff D.* class action lawsuit. The Division of Medicaid is the payer for these services. The YES department has collaborated with various entities and stakeholders; the purpose of this docket is to operationalize YES in rule and to align the new program with the terms of the *Jeff D.* class action lawsuit agreement. New sections are added to the rule.

Mr. Gutierrez reported there would be no cost related to the implementation of managed care for the administration of the Idaho Behavioral Health Plan. He indicated that the Idaho Department of Health and Welfare is proposing the implementation of a cost-sharing mechanism for families with income over 150% of the Federal Poverty Level.

Mr. Gutierrez shared that negotiated rulemaking was not conducted. There were two public comments regarding proposed rules in this docket—both were in general support of YES and asked for more detail regarding services and processes. **Mr. Gutierrez** concluded that the effective date of this change is January 1, 2018. He welcomed questions from the Committee.

DISCUSSION: **Senator Martin** expressed frustration with the *Jeff D.* lawsuit settlement and the proposed January 1, 2018 start date, which had already happened. **Mr. Gutierrez** stated he feels the same frustration. **Matt Wimmer**, Medicaid Administrator, clarified that the implementation date of January 1 was determined last year under H 043.

Senator Foreman voiced similar frustration and asked if most of the \$2.3 million for the program would come from federal funds. **Mr. Gutierrez** confirmed that costs do increase over time as more services are implemented, with most services covered under the federal match from Medicaid. The forecasted cost is the best the agency can presently estimate, though they are liable to vary.

Senator Jordan clarified that the rules will align with H 043 and refer to a very specific definition in code. **Senator Lee** followed up on Senator Jordan's statement by echoing frustrations with the current situation, though she is pleased the rules reflect the legislative intent. She stated the Committee's role is to determine if the rules align with legislative intent. She expressed her belief that this docket does so.

MOTION: **Senator Jordan** moved to approve **Docket No. 16-0310-1706**. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 16-0318-1701: **Medicaid Cost-Sharing**. **Mr. Gutierrez** presented **Docket No. 16-0318-1701**, which is a companion to **Docket No. 16-0310-1706**. **Mr. Gutierrez** explained the purpose of this docket is to comply with the cost-sharing provisions in Idaho Code and to ensure parity with other programs that also serve Idaho children with specific health care needs. This rule change aligns with federal regulations related to cost-sharing. Families may request a premium waiver if they are unable to pay, which will have no impact on a child's Medicaid eligibility. **Mr. Gutierrez** expects these rules to have a positive impact and the premiums to generate \$50,000 in receipts in fiscal year (FY) 2010. These fees will offset the cost of implementing YES. Negotiated rulemaking was not feasible since these rules must comply with the terms of the class action settlement agreement. No public comments were received in response to this docket. The effective date for this rule change is July 1, 2018.

DISCUSSION: **Senator Lee** inquired as to eligibility requirements regarding inability to pay premiums. **Mr. Gutierrez** provided information on how families are determined eligible for a fee waiver. **Senator Lee** requested that, when they become available, information regarding the number of waivers that are issued be made public, so that need and total cost can be determined.

MOTION: **Senator Martin** moved to approve **Docket No. 16-0318-1701**. **Chairman Heider** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 16-0503-1701: **Rules Governing Contested Case Proceedings and Declaratory Rulings**. **Tamara Prisock**, Administrator, Division of Licensing and Certification, presented **Docket No. 16-0503-1701**. **Ms. Prisock** overviewed the changes in this docket and their relation to the rules, with the following as the main changes: a provision for expedited fair hearings, in which states are required to establish a process to request expedited fair hearing; child support enforcement, in which time limits for requesting a hearing after receiving a notice of license suspension or a notice of an asset withholding order and relevant deadlines; and changes to support the YES program. These changes are required by the *Jeff D.* settlement agreement. There is a new rule adding a grievance process for the YES program. **Ms. Prisock** requested a January 1, 2018 acceptance date and mentioned there is no fiscal impact to the General Fund. There is also no negotiated rulemaking.

DISCUSSION: **Chairman Heider** voiced concern about the time frame; he asked why it takes so long to respond to a grievance. **Ms. Prisock** remarked that the hearings are done as expeditiously as possible, and that these proposed changes add an expedited process for certain individuals.

Senator Lee posed a question regarding time limits for child support; she asked how someone resolves the process quickly given the stated timeframes. **Ms. Prisock** referred the question to Julie Hammon. **Julie Hammon**, Administrator, Division of Welfare, provided background on the process and how the current process affects individuals. Once someone is in arrears, they receive reminders for several months alerting them of the delinquency. They also receive notice that they may have their license suspended or that their financial assets may be seized. They have a time period to inform the Division they would like to make payments. Once the disciplinary action has been taken, they can then file for a hearing. The hearings are filed quickly, if requested within 14 days, and decisions can result within 30 days, but generally don't take that long. **Senator Lee** requested clarification as to the number of days. **Ms. Hammon** stated that the rules are from federal guidance. **Senator Lee** inquired as to the flexibility of the numbers of days. **Ms. Hammon** responded that those numbers were provided by Child Support Enforcement, so they are not flexible.

Senator Martin asked if these changes are beneficial to the Department of Health and Welfare and for Idaho. **Ms. Hammon** responded that she believes they are. She gave examples of ways in which Idaho benefits from this change, such as the introduction of an expedited process for those who have serious health issues. This would also introduce ways for YES participants to appeal decisions.

Senator Potts requested information regarding exceptions for prehearing conference. **Senator Potts** interprets the language to do nothing to mandate individuals to attend the prehearing conference. **Ms. Prisock** explained there is a federal requirement detailing how the Department of Health and Welfare cannot mandate prehearing requirements.

MOTION: **Senator Jordan** moved to approve **Docket No. 16-0503-1701**. **Senator Martin** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 16-0737-1701 **Children's Mental Health Services. Treena Clark**, Program Manager, Division of Behavioral Health, explained the two changes being proposed to **Docket No. 16-0737-1701**. The first is to reference the contested case rule in the Appeals sections, and the second is to remove the reimbursement rates table for foster care and, instead, reference another chapter. There was no negotiated rulemaking conducted and no fiscal impact is expected to result from these changes.

MOTION: **Senator Potts** moved to approve **Docket No. 16-0737-1701**. **Chairman Heider** seconded the motion. The motion passed by **voice vote**.

DOCKET NO. 16-0301-1701 **Eligibility for Health Care Assistance for Families and Children. Shannon Brady**, Division of Welfare, presented **Docket No. 16-0301-1701**. She illustrated the additions to be made to the Idaho rules eligibility criteria surrounding YES Medicaid program. Public hearings were held in Boise and no public comments were received.

MOTION: **Senator Martin** moved to approve **Docket No. 16-0301-1701**. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO.
16-0301-1702**

Eligibility for Health Care Assistance for Families and Children. Ms. Brady presented the three changes to be made to the Medicaid program for families. The first change clarifies that children with IR-4 Foreign Adoption visa status are not considered qualified non-citizens under existing Medicaid rules. The second change clarifies the eligibility for postpartum services under the Medicaid program for pregnant women, which was previously limited to women who were deemed eligible prior to birth of the baby. This requested change ensures all eligible women can receive 60 days of postpartum care, even if their eligibility was processed after the birth. This change aligns with federal guidance for the program. The third change involves children who are eligible for the Medicaid program through State foster care. This provides a reference to the rules and strikes duplication of program language. Negotiated rulemaking was not conducted and no fiscal impact is expected from these changes.

DISCUSSION:

Senator Lee asked whether there is any State discretion or if it was solely compliant with federal regulations. **Ms. Brady** responded the changes reference changes in another Division's chapter.

Senator Lee questioned what these changes mean functionally. **Ms. Brady** replied that this change clarifies some language and references another chapter directly. In practice, children in foster care are evaluated by the Department of Family and Community Services (FACS). If they determine the child is not eligible, they can ask this Division to evaluate the child's eligibility.

Chairman Heider requested clarification as to the language regarding American Indians and whether being born in Canada and being born outside the United States are the same thing. **Joyce Broadsword**, Tribal Programs Manager for the Department of Health & Welfare, clarified there are Native American tribes in Idaho who share lineage with Canadians, whereas there may not be American Indian tribes not on this continent. **Senator Lee** specified that, as it is currently written, being born in Canada is implied to mean something different than being born outside the US. **Ms. Broadsword** continued that, because of the sovereignty of tribes, some of the United States tribal nations extend into Canada. **Senator Lee** concluded that, because the tribe originally encompassed the whole geographic area, it could include Canada. **Ms. Broadsword** stated there are tribes in Canada that share familial relations with tribes located within the United States.

MOTION:

Chairman Heider moved to approve **Docket No. 16-0301-1702**. **Senator Lee** seconded the motion. The motion passed by **voice vote**.

**DOCKET NO.
16-0305-1701**

Eligibility for Health Care Assistance for Families and Children. Ms. Brady presented **Docket No. 16-0305-1701**, which proposes changes to the Aged, Blind, and Disabled (AABD) program. Five changes are proposed to AABD. First, this proposal clarifies language that an individual seeking the AABD cash supplement must be receiving a SSI payment. Second, the language regarding annuities has been updated to specify which chapter accommodates retirement accounts. Third, the rule regarding allowances for participants living in a Certified Family Home (CFH) has been updated to reference the correct allowance figure. Fourth, the dates of Medicaid eligibility are clarified based on the receipt of SSI. Fifth, the addition of an exception to the asset transfer penalty for individuals who move assets into a trust for the care and support of someone who is under 65 years of age and who is disabled by social security standards will not have the penalty applied. This rule addition will bring Idaho into compliance with federal guidance. Negotiated rulemaking was not conducted and no fiscal impact is expected from these changes.

DISCUSSION: **Senator Potts** requested clarification as to whether the State has been paying \$77 or \$96. He asked if the state has been underpaying, and if the dollar amount is a federal or State requirement. **Ms. Brady** responded that the agency has been paying the correct amount and the cleanup effort will not have any back payment with it. As to the dollar amount, the initial figure originated decades ago, but **Ms. Brady** could not say for certain from where.

Senator Potts reported that if it is State-mandated, the State has been overpaying, which is a significant problem. If it is federally-mandated, Idaho has been paying the correct amount. **Ms. Brady** responded that it is a typographical error. When there is a typographical error, Idaho defers to federal guidance. **Senator Potts** believes it was intentional and voiced his concern.

MOTION: **Senator Martin** moved to approve **Docket No. 16-0305-1701**.

DISCUSSION: **Senator Potts** stated his belief that it is critical to have the correct number before moving forward. **Senator Lee** voiced that she is comfortable with all the other pieces of the rule and that, if the Committee would like to revisit the rule in the future, it would have that option. **Vice Chairman Souza** invited Ms. Brady to return the next day for further discussion. **Ms. Brady** accepted the opportunity.

MOTION: The motion and rule were **withdrawn**.

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

DISCUSSION: **Vice Chairman Souza** referenced a letter (see Attachment 1), written to Dennis Stevenson, Administrative Rules Coordinator, which pertains to rules updates and formatting. **Vice Chairman Souza** explained the rules do not have omitted language included because it increases the cost of print-outs and proposed several new formatting changes, such as color-coding integrated changes; specifying whether changes are mandated by federal conformity; and any State discretion within the rule. **Senator Potts** voiced his support for this change. **Senator Lee** expressed her belief that this will help improve processes for all agencies. **Senator Agenbroad** believes this will make the agencies better. **Vice Chairman Souza** voiced that she does not want to burden agencies and believes these changes will help. **Chairman Heider** asked for clarification regarding additional costs. **Vice Chairman Souza** responded that the new changes will not consume more space on the page and will not inflict more costs.

Senator Heider
Chair

Rachel Goodman
Secretary

Samuel Griffin
Assistant Secretary