

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Thursday, February 01, 2018

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Agenbroad, Foreman, Potts, 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 Health and Welfare Committee (Committee) to order at 2:59 p.m.

MINUTES APPROVAL: **Senator Jordan** moved to approve the Minutes of January 22, 2018. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**.

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

DOCKET NO. 16-0305-1701 **Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled. Shannon Brady** introduced herself as the Deputy Administrator of the Division of Welfare within the Idaho Department of Health and Welfare (DHW). **Ms. Brady** explained that she had presented this docket before the Committee on January 31, 2018. During that presentation, the Committee moved to table this docket until they received further information regarding the proposed changes in section 513. The proposed changes include correcting the stated amount for the basic needs allowance for residents of a certified family home (CFH) or assisted living facility.

Ms. Brady stated that Idaho's Medicaid Program provides a basic personal needs allowance to eligible CFH residents and assisted living facility residents. Federal regulations require states to define this personal needs allowance. The allowance must be at least \$30 per month. In 2007, Idaho set the personal needs allowance at \$77. **Ms. Brady** stated that the 1915 Waiver, which establishes the personal needs allowance, requires cost of living and social security income adjustments to be considered when calculating the allowance. This allows for increases over time. Between 2007 and 2013, the personal needs allowance increased to \$96. In 2013, DHW modified section 513 of the rule, altering the methodology for applying cost of living adjustments. When the rule was written, DHW failed to update the basic personal needs allowance amount to \$96. **Ms. Brady** noted that this oversight did not impact recipients of the allowance, as DHW publishes updated personal needs allowance figures on its website each year. **Ms. Brady** referenced a handout displaying the published allowance figures for each year since 2013 (see Attachment 1).

Senator Potts asked if a federal mandate required the amount to be increased to \$96. **Ms. Brady** clarified that federal regulations require basic personal needs allowances to be at least \$30. She explained that the cost of living adjustments accounted for the increase in the allowance from \$77 to \$96. **Senator Potts** expressed concern that DHW has not been complying with the rules, which identified the personal needs allowance as \$77. He noted that the error remained

in the rules for five years before being changed. He advised DHW to be more attentive to the rules. **Ms. Brady** agreed with Senator Potts' observations.

MOTION: There being no more testimony or questions, **Senator Martin** moved to approve **Docket No. 16-0305-1701**. **Senator Lee** seconded the motion. Motion carried by **voice vote**.

DOCKET NO. 16-0308-1701 **Rules Relating to Temporary Assistance for Families in Idaho (TAFI)**. **Ericka Rupp** introduced herself as a Program Manager for the Temporary Assistance for Needy Families (TANF) program in the Division of Welfare within DHW. **Ms. Rupp** requested that the Committee reject **Docket No. 16-0308-1701**. After publication of the proposed rules, DHW found that this docket did not include all the changes needed. **Ms. Rupp** stated that she will present a new set of proposed rules to the Committee in 2019.

MOTION: There being no more testimony or questions, **Senator Lee** moved to reject **Docket 16-0308-1701**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

Senator Lee sought more information regarding the consequences of rejecting this docket. **Ms. Rupp** stated that a temporary rule will be proposed and that there will be no consequences.

DOCKET NO. 16-0612-1701 **Rules Governing the Idaho Child Care Program (ICCP)**. **Ms. Rupp** introduced herself as the Program Manager for ICCP in the Division of Welfare within DHW. She explained that the ICCP promotes economic self-sufficiency for low-income families by providing reliable childcare for parents who are working or attending school. The ICCP also supports healthy development and school-readiness for children. **Ms. Rupp** stated that this docket proposes changes to eligibility requirements for families and health and safety requirements for providers.

The proposed changes include: 1.) defining how ICCP will treat adults acting in place of a parent; 2.) redefining key terms; 3.) clarifying how DHW will consider lump-sum and monthly income; 4.) clarifying language regarding cooperation with child support and in-home care; 5.) updating options to recover benefit overpayments; and 6.) modifying the graduated phase-out process. **Ms. Rupp** explained that families whose income increases and exceeds 130 percent of the federal poverty level are gradually phased out of ICCP. Federal regulations now require states to provide 12 additional months of ICCP benefits to these families. States are permitted to set an income threshold to determine eligibility for the graduated phase-out process. These proposed rules include an income limit for the phase-out process.

Ms. Rupp explained that all ICCP providers have undergone safe sleep training. This docket would require providers to implement safe sleep practices in order to be ICCP-certified. Safe sleep training is available to providers for free online, in-person, and on DVD.

Senator Lee noted that the rules define "in loco parentis" as legal guardianship. She asked why the rules include a definition of "in loco parentis" as opposed to simply using the term "guardian" throughout the rules. **Ms. Rupp** explained that federal law requires ICCP to define "in loco parentis." **Senator Lee** asked if these changes would have any substantive effect in Idaho. **Ms. Rupp** clarified that they would not.

MOTION: There being no more testimony or questions, **Chairman Heider** moved to approve **Docket No. 16-0612-1701**. **Senator Martin** seconded the motion. The motion carried by **voice vote**.

Rules Governing Certified Family Homes (CFH). **Steven Millward** introduced himself as the Program Manager for the CFH Program in the Division of Licensing and Certification within DHW. **Mr. Millward** explained that the CFH Program provides family-style, residential living for vulnerable adults. Between one and four adults may live in a CFH with their care provider. Seventy-six percent of certified homes care for their own loved ones. There are more than 2,400 certified family homes located in Idaho. **Mr. Millward** noted that DHW held negotiated rulemaking sessions and engaged with over 300 stakeholders when developing these proposed rules. He asserted that these rules have not been changed in over a decade.

Mr. Millward explained that federal regulations require Idaho's Medicaid program to implement new Home and Community-Based Services Standards. Idaho must update rules governing CFH to incorporate eviction and appeal processes. Without these changes, CFHs risk losing compensation by Medicaid. The proposed changes align CFH eviction and appeal processes with Idaho landlord-tenant law. **Mr. Millward** stated that the proposed rule changes also allow for an emergency temporary placement for residents who are unsafe in their current CFH. This process protects the resident's right to return to the home when it is deemed safe to do so.

Mr. Millward explained that the proposed changes fit within three categories: 1.) improved safety; 2.) operational relief; and 3.) clarification. Proposed changes addressing safety include the following: creation of a section addressing hourly adult care; increase in fire drills frequency; addition of reporting requirement for critical incidents; requirement for DHW to review and approve new residents moving into a CFH; codification of medication standards; and requirement that a CFH with gas appliances or an enclosed garage have a carbon monoxide detector. Proposed changes addressing operational relief include the following: revision to prevent an interpretation of the rules that certain services must be offered by the home free of charge; allowing temporary certification to avoid a lapse in certification when an existing provider moves to a new location; expansion of acceptable annual continuing education training; expansion of acceptable assessment tools for publicly-funded residents; allowing electric space heaters, given that providers take certain precautions; and allowing a cell phone as the home telephone. Proposed changes also clarify the following: various definitions; when application fees are required; provisions for voluntary closure of a CFH; goods and services included in resident's monthly room and board charge; reporting requirements; and provisional certification.

Vice Chairman Souza asked when these rules were last updated. **Mr. Millward** stated that the last major rewrite of these rules occurred in 2006. He noted that small changes have been made since that time.

Senator Lee noted that the proposed rules included the Scales of Independent Behavior-Revised (SIB-R) assessment tool. She explained that another division of DHW had removed SIB-R from its rules because the assessment is not appropriate. **Senator Lee** noted her shock at seeing SIB-R included in this docket. **Mr. Millward** noted that the rules do not specifically mention SIB-R; they instead refer to assessment tools in general. **Senator Lee** stated that she would like to have a specific DHW-approved assessment tool identified in the rules.

Chairman Heider sought more information regarding the allowance of cell phones as home telephones. **Mr. Millward** explained that the existing rule requires each CFH to have a landline. The proposed rules would allow any phone to be designated as a home phone, provided that it is operational at all times.

Chairman Heider noted that minors living in a CFH must undergo a background check when they turn 18. He asked if there is a maximum age for individuals living in a CFH. **Mr. Millward** stated that residents receiving services in a CFH must be over 18. Residents that are not receiving services can be any age. **Chairman Heider** asked if residents must undergo a background check when they turn 18. He asked if these individuals can continue to live in the home indefinitely. **Mr. Millward** confirmed that children living in the home must undergo a background check when they turn 18. There is no maximum age limit for conducting these background checks. However, if obtaining a background check or being fingerprinted is a hardship for someone, they can obtain a waiver for the requirement.

Senator Potts noted that the proposed rules require cell phones that are used as landlines to be Enhanced 911 compliant. He explained that all cell phones have been required to be Enhanced 911 compliant since 2005. **Senator Potts** asked if it was necessary to include an Enhanced 911 requirement in the updated rules. **Mr. Millward** acknowledged that most modern cell phones are Enhanced 911 compliant. He stated that some wireless service carriers are transparent about Enhanced 911 compliance, but others are not. Therefore, the requirement was included in the proposed rules.

TESTIMONY:

Toni Brinegar introduced herself as a Program Specialist for the Idaho Council on Developmental Disabilities (ICDD). She stated that ICDD supports **Docket No. 16-0319-1701**. She highlighted several improvements in the proposed rules, including: stricter money management guidelines; increased frequency and documentation of participant rights; improved admission guidelines; and creation of a section addressing hourly adult care. **Ms. Brinegar** encouraged DHW to further expand accountability to residents by notifying them when there has been a problem identified with their provider. She also encouraged DHW to consider residents' preferences in regard to alternative care providers. **Ms. Brinegar** suggested that DHW also review the issue of unplanned moves, taking into account that most residents have limited access to technology.

Senator Jordan stated that Ms. Brinegar expressed concern about notifying residents of problems with a provider and residents' limited access to technology. She asked how DHW could address these concerns. **Ms. Brinegar** explained that the quality assurance team within DHW effectively ensures that providers are complying with guidelines. She noted that ICDD and DisAbility Rights Idaho collect trend data; when they see a trend in complaints, they begin investigating the issue. **Ms. Brinegar** commended DHW for its collaborative efforts in the rulemaking process. She cited a rule section stating that residents must have access to and assistance with technology.

Marilyn Sword spoke on behalf of the Idaho Caregiver Alliance (ICA), which is a coalition of organizations that support unpaid family caregivers. The ICA supported this docket, especially the section dedicated to adult hourly care. **Ms. Sword** commended Mr. Millward for his collaboration with stakeholders during rulemaking. She asserted that family caregivers need respite care, and the proposed section of this docket regarding adult hourly care would address this issue.

MOTION:

There being no more testimony or questions, **Senator Martin** moved to approve **Docket No. 16-0319-1701**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

PASSED THE GAVEL:

Vice Chairman Souza passed the gavel back to Chairman Heider.

MINUTES APPROVAL:

Senator Harris moved to approve the Minutes of January 18, 2018. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**.

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

Senator Heider
Chair

Rachel Goodman
Secretary