

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Friday, April 05, 2019

TIME: 10:00 A.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Martin, Vice Chairman Souza, Senators Heider, Lee, Harris, Burtenshaw, Bayer, Jordan, and Nelson

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 Martin** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 10:10 a.m.

S 1204 AA, AA H **S 1204aa, aaH** was before the Committee for consideration of the amendments. **Chairman Martin** announced that the hearing would be slightly delayed pending receipt of requested information. He announced that the Committee would not hear further public testimony, but if a Committee member had a question for any expert in attendance, they were welcome to pose that question. He further announced that Vice Chairman Souza offered to walk the Committee through the amendments. He informed members that a draft of the bill—not the official, engrossed bill—was included in their information packets.

Senator Jordan expressed concern about the lack of public testimony because the amendments that they were being asked to concur on were drafted with no public testimony and no public process.

MOTION: **Senator Jordan** moved, pursuant to Senate Rule 20(D), that the Committee accept public testimony for the limited purpose of addressing the amendments on which the Committee was being asked to concur. **Senator Nelson** seconded the motion.

DISCUSSION: **Chairman Martin** requested clarification from Senator Jordan on the motion. **Senator Jordan** clarified that her motion was very narrow for the purpose of the public being able to address the amendments on which they were being asked to concur, since the amendments had not been subject to any public testimony.

Vice Chairman Souza expressed concern with the motion, not only in the interest of time—the floor is recessed while waiting for this Committee's decision—but because concurrence of amendments is not typically a public testimony opportunity. The public has been over this bill and earlier iterations many times. These amendments represent small changes introduced by the House just yesterday and are not in front of the public. They do not have a copy, and have not had time to read and digest the information. In that regard, the testimony would be the same testimony the Committee has heard on the topic as a broad subject. Before the Committee today are the very specific changes that were made by the House. She recommended that the Committee not allow public testimony at this time.

Senator Jordan reported that the amendments were posted online late yesterday afternoon, so the public has had ample time to see what the changes are, and are completely capable of crafting a narrow testimony to only those changes.

Chairman Martin announced that the current Committee action falls under Senate Rule 14(F), which is silent on public testimony.

Senator Jordan clarified that the rule she stated was Rule 20(D), that all committees of any standing, select, or special committee, shall be open to the public at all times and any person may attend any hearing of such committee, but may participate in the committee only with the approval of the committee itself. And that is the approval that her motion seeks (see Attachment 1 for submitted written testimony).

VOICE VOTE: The motion to allow public testimony failed by **voice vote**.

DISCUSSION: **Vice Chairman Souza** presented the amendments to **S 1204aa, aaH** and spoke specifically to the changes that made this bill slightly different than the original **S 1204**. She explained the various language changes which concerned tax credits, a federal waiver, and allowing people to stay on the exchange rather than enrolling in Medicaid.

Senator Lee asked if the state would pick up the advance premium tax credit if there was a change in cost, and if there was a substantive change in language regarding who would pick that up. **Vice Chairman Souza** clarified that the languages states they would continue to get the subsidized tax credit coverage from the federal government. This will not obligate the state to pay for the subsidized health care plans.

Senator Lee commented that as she understood it, the waiver would allow those individuals to opt in to Medicaid if they wanted to, or they could stay on the exchange. She recalled that the Committee had looked at that language and previous versions of bills, and it seemed that the state would assume the advanced premium tax credit. She asked for reassurance that the bill did not create a scenario where the General Fund had to assume the advance tax credit if individuals chose to stay on the exchange. **Vice Chairman Souza** replied that Idaho would not need a waiver if the state was going to pick up the subsidy: the waiver is asking the federal government to continue to cover that cost. If the waiver is granted, those people may stay on the exchange if they so choose.

Senator Harris noted that the January 1, 2020 implementation date does not align with the November, 2019 open enrollment date and asked for an explanation. **Vice Chairman Souza** confirmed that January 1, 2020 is the date that the Medicaid expansion program begins, though enrollment starts ahead of that. In follow up, **Senator Harris** pointed out a conflict in the sequence of events related to when an individual has to apply for Medicaid and when they know they will be eligible or exempt from the waiver. **Vice Chairman Souza** stated she did not believe it created a conflict, speculating that the Department of Health and Welfare (Department) would notify in advance that population to which this waiver has been applied. If the waiver does not get approved, those individuals would be moved on to Medicaid.

Senator Jordan said she understood what Vice Chairman Souza is stating: that it would be a functional change for people who are already enrolled on the exchange. But this language reads to cover the entire eligible population and there would be no way for the Department to contact those people, because they will not know until they begin enrolling in Medicaid who those people are. By January 1, 2020 they will have missed the enrollment period for the exchange. That is the concern about this language. **Vice Chairman Souza** replied that she did not believe that this language was different than the language in any other legislation having to do with this population and Medicaid expansion. The Department will implement this according to their methods and rules will be promulgated so that this population will be told about their options when they do enroll. When they come to enroll in Medicaid and they are in the population that is 100 to 138 percent of federal poverty level, they will be informed that they have a choice to be in Medicaid or to be on a subsidized policy on the exchange.

Senator Jordan requested clarification from the Department to make sure enrollees will in fact have a choice given concerns about the effective date.

Lori Wolff, Deputy Director for the Department, confirmed that the Department determines the tax credits for individuals on the exchange, under the umbrella of Department eligibility. Open enrollment begins in October as the renewal period for individuals already eligible on the exchange. The Department has to interface with the Internal Revenue Service (IRS) to determine if individuals are still eligible. They run those eligibility files and send them to Your Health Idaho prior to November 1, full open enrollment, so that individuals selecting their plan for the following year—in this case 2020—will know what their tax credit is before they go select their plan. Between November 1 and December 20, they can select a plan that will start January 1. To keep them on the exchange for plan year 2020, the Department would need to know whether or not this waiver is approved in order to determine their eligibility for the tax credit, prior to the month of October. The alternative would be for the Department to assume that they are eligible for Medicaid, and if the waiver were approved sometime before January 1, 2020, the Department would have to go back and redo it. The Department cannot grant a subsequent open enrollment period, so would need approval of this waiver prior to October 1, 2019.

Senator Jordan expressed concern that, if the choice between the exchange and Medicaid is to be offered to every participant, people new to the program would not be able to opt for enrollment on January 1, 2020, and would have to wait until the following year. **Ms. Wolff** confirmed that Senator Jordan's understanding of the issue was correct and it is why the Department must have an answer from the federal government on this waiver by October; so that in November, the Department could determine if new applications are eligible for Medicaid or for a tax credit and give them the choice during the open enrollment period.

Senator Lee commented that the Committee has had extensive conversations about the tax credit. In a previous version of this bill, an individual would go on Medicaid and could then opt out. If they opted out in order to stay on the exchange, then the state would pay part of that tax credit. Senator Lee asked Ms. Wolff if this new version of the bill substantively changes any of the state's liability. **Ms. Wolff** explained that the section of code the Department would be requesting the federal government to waive is 36 B of the IRS regulations, which state an individual cannot be eligible for a tax credit if they are eligible for Medicaid. Under this language, the Department would expand Medicaid up to 138 percent of the federal poverty limit and determine them eligible for the tax credit first, and then second, give them a choice for Medicaid. The Department would ask the federal government to change that law. In order for them to approve that waiver, the Department would have to show cost neutrality which will be part of the challenge: demonstrating to the federal government that it is cost-neutral not just to the state, but for the federal government to enroll them on the exchange instead of Medicaid. The Department will have to conduct an actuarial analysis to support that. If it finds that it does cost more, the federal government would respond that in order to make implementation of this waiver cost neutral, the state must direct funds to cover implementation.

Chairman Martin noted the difficulty for an individual already on the exchange to make a decision when the waiver hasn't been granted yet. **Ms. Wolff** agreed that open enrollment would be challenging for those individuals between 100 and 138 of the poverty level if the Department has not yet received waiver approval from the federal government. It is why the Department, and Legislature, must make every effort to move this forward to obtain that decision. If the Department has not received a decision yet from the federal government, it will have to project eligibility for January and assume that this population's eligibility will be to Medicaid. As the Department undertakes the renewal process for individuals on the exchange that are eligible for the tax credit, it would have to assume eligibility for Medicaid. The Department would not determine them eligible for a tax credit and they would get a notice telling them they are eligible for Medicaid. This timing issue is why it is so important that the Department receive waiver notification by October 1, 2019.

Vice Chairman Souza asked if there would there be any consideration for that population during this first year of this program if the waiver approval came after October, for example a special open enrollment period. **Ms. Wolff** offered that the Department could include that as a condition in the waiver, but would also need federal approval for that. It presents a significant challenge given that there is a Medicaid program available and that population would be covered under it. The only time a special enrollment period is granted is when someone loses coverage.

Vice Chairman Souza expressed her hope that if the waiver response did not arrive in time for open enrollment but was approved in late December, that it would still be possible to have a special enrollment during the January timeframe allowing coverage under Medicaid for a short while, and the option to transition back onto the exchange. **Ms. Wolff** reiterated that the Department would still have to have approval from the federal government, including the IRS, in order to offer a special enrollment period

Senator Jordan asked Ms. Wolff to explain the typical timeline and process for receiving federal permission. **Ms. Wolff** explained that the Department has never submitted this kind of waiver request. She was unable to speculate that timeframe but stated the Department would utilize actuarial assistance to hopefully speed up the approval process and would include the special enrollment period as a condition in the same application.

Chairman Martin invited Vice Chairman Souza to continue with her description of the amendments. **Vice Chairman Souza** stated that the only other change in the House amendments relates to work requirements. The language requiring 20 hours per week is the same as in earlier versions of the bill, the change is in the reporting, which will now only be required every six months. Individual will have to comply with that requirement, or comply with a work-training program 20 hours per week, volunteering 20 hours per week, or be enrolled in postsecondary education or another recognized education program for 20 hours per week.

After a question from Senator Bayer, **Vice Chairman Souza** clarified that any combination of working, volunteering, or participating in a work program, for a total of at least 20 hours per week as determined by the Department, or subject to and complying with requirements of the program for Temporary Assistance for Needy Families (TANF), or participating and complying with the requirements of a workforce program in the Supplemental Nutrition Assistance Program (SNAP) is allowed.

Vice Chairman Souza indicated that an individual who does not comply with the work requirements shall be ineligible for Medicaid, but may reapply for Medicaid two months after such determination is made, or earlier. **Vice Chairman Souza** stated that House members informed her that reapplication could occur the very next day, if they come into compliance through the options listed. If the provisions of this language are not federally approved, or are found to be unlawful by a court of competent jurisdiction, they would be subject to the maximum allowable copayments on covered Idaho Medicaid services for a period of six months, or until the person complies with the work requirements. House members wanted to include in their amendment that if a participant does not fulfill the work requirement, they will come off of Medicaid for a short time. They can get right back on at any time that they comply. There is a 90 day clawback that is already the standard in the Department, and is not changed by this legislation. This clawback applies to any healthcare costs that a person incurs during any time that they are off the Medicaid program. When they reapply or come back into compliance, that clawback is in effect and the provider(s) would not be responsible; Medicaid would pick up the cost.

Senator Jordan asked if, during the period of time that a person is kicked off Medicaid for noncompliance, and understanding there is a clawback, this would still impact catastrophic funds for reimbursement of medical care in the event of a medical emergency. She inquired how that impacts savings to those same programs that we intend to draw funds from to partially fund Medicaid expansion.

Vice Chairman Souza noted that healthcare billing is typically delayed by months and she believes the Department would expedite the clawback provisions and any indigent and catastrophic funds, if impacted at all, would be reimbursed rapidly.

Senator Harris inquired where the two-month limit originated. **Vice Chairman Souza** stated that she was not sure, but speculated it was to accommodate the 90-day clawback with a safe margin. In follow up, **Senator Harris** asked for the assistance of the Department to provide further insight on the two-month limit, wondering if it was found in other states and how the Department would implement it.

Ms. Wolff explained that she could not speak to the intent of the bill writer, but it is one of the challenges that the Department would have to reconcile. The language states they will be ineligible for Medicaid, but may reapply for Medicaid two months later. It does not indicate that they would be eligible if they do not meet the requirements in the work requirements section (paragraph A). Paragraph A states that they must be meeting requirements in order to participate in the Medicaid expansion program, and they can submit an application, but they may not be eligible unless they are then complying with those requirements. She emphasized again that she would have to defer to the bill writers. **Vice Chairman Souza** responded that the bill states the Department will promulgate rules on the waivers and also for the implementation of these sections. The details of how this would work will be promulgated through the Department's rulemaking process.

Senator Bayer inquired if the open enrollment period has any relationship to this two-month reapplication timeframe. **Ms. Wolff** explained that the open enrollment period only applies to individuals with private insurance and the tax credit, who have purchased that private insurance on the exchange. There is no open enrollment period for Medicaid.

Vice Chairman Souza stated that based on the recent court decisions this waiver is unlikely, but the House felt it was important to include this language and that this waiver should be requested. She explained that if the federal government denied the waiver, Medicaid would revert to the copay system that was in the previous version of this bill.

Senator Jordan inquired if the cost of administering a reapplication and the potential removal of people from Medicaid is included in the latest fiscal note. **Vice Chairman Souza** restated that rules are to be promulgated by the Department. Individuals do not have to stay off of the program for two months—they can get right back on if they fulfill the work requirements, and the cost of that reapplication process would be part of the administrative costs found under the work requirements on the fiscal note.

Senator Jordan inquired about a language change on page 3, line 9, that describes those who are exempt from provisions in the paragraph and certain qualifications: the old language, "physically or intellectually unfit for employment" has been replaced with "physically or intellectually unable to work." There is some concern about whether that includes, or excludes, people with mental illness. Their coverage is a big piece of Medicaid expansion benefits. She requested the legal definition and how it is determined that a person is unable to work. **Vice Chairman Souza** acknowledged that it is an important change, but not substantive. Stylistically it is better because the word "unfit" has a negative connotation compared to "unable." **Vice Chairman Souza** did not know what the legal definition for "unable to work" was and suggested the Department might have that. **Ms. Wolff** stated that typically, the Department allows the individual's medical provider to define whether they are able to work. If a medical provider determines that their patient is not able to work, the Department uses that as validation for an exemption.

Senator Lee requested the Department's perspective on language for an American Indian or Alaska Native, noting it appears to be a different standard. She asked for confirmation that we currently do not negotiate separately with our tribes or Native Alaskans, as far as Medicaid coverage. **Ms. Wolff** replied that the Department does engage with the tribes whenever there are changes to coverage and negotiated rulemaking, but does not necessarily negotiate separate rules for them. In follow up, **Senator Lee** expressed concern about adding language to policy that creates a separate status and expectation and wondered if consideration had been given to how it might affect our state Medicaid policy. **Ms. Wolff** responded that the Department has work requirements in SNAP. The language is a little different than this bill and the Department does not exempt American Indians or Alaska Natives. However, if they are referred to the Department's work and training program they can instead choose to participate in a program organized by the tribes.

Vice Chairman Souza notified the Chairman that she had a letter from all of the tribes here in Idaho and was prepared to use it on the floor during debate, but offered to introduce it in this hearing. **Senator Jordan** made a point of order that it is not part of the amendments that the Committee is debating on whether or not to concur, and suggested the floor was the better place to address it. **Chairman Martin** allowed reference to the letter. **Vice Chairman Souza** stated she would proceed with the letter simply for the benefit of the public in attendance to assist in their understanding of the process. The letter, dated April 3, 2019, represents all five of the tribes in Idaho. A couple months ago, The Centers for Medicare & Medicaid Services (CMS) approved an amendment for the state of Arizona, which included a tribal exemption from work requirements. The American Indian and Alaskan Native populations are treated distinctly under the ACA, which makes it appropriate for states to implement ACA programs to mirror that treatment.

Chairman Martin asked **Vice Chairman Souza** to speak to the fiscal note. She stated it was her understanding that the wording of the reporting mechanism included in these amendments is more streamlined and aligned with SNAP requirements, therefore reducing the cost for the program itself and for oversight reporting. The ongoing state cost portion is just under \$500,000. Onetime expenses from the General Fund are estimated at \$367,500 to set up the systems associated with this action as well as the number of full-time employees needed. She cautioned that these are extremely loose estimates since there is no way to know how many people will sign up to be on Medicaid with the expansion. The Department does not know how many will qualify under the expansion or how many will be exempt from the work requirements. The fiscal note is based on the best information available. The information was provided by Jared Tatro, Principal Budget and Policy Analyst for Health and Human Services, in the Legislative Services Office.

Senator Jordan again asked, in regard to the fiscal note, that the Committee speak only to those areas that apply to the amendments with which they were being asked to concur and to save the rest of the debate for the floor.

Senator Jordan asked Mr. Tatro for confirmation regarding the fiscal note. It indicates almost \$1.5 million as the federal portion of implementing the work requirements. In other states, with or without waivers approved, federal dollars were not approved to use for those waivers, or if they were, it reduced their match rate. If this waiver is approved, but the state is not approved to use those federal dollars, that appears to be an additional \$1.5 million on top of the almost \$3 million cost of this program.

Mr. Tatro explained that the Department's self-reliance positions in the Division of Welfare are not just trained for Medicaid work requirements, they are also trained in SNAP so when a call comes in staff can handle any eligibility question. As a result, it is difficult to separate out staff cost allocation. The federal government covers some of the staffing cost, as well as some of the development and waiver cost.

Senator Jordan asked Mr. Tatro to confirm that if the state went with a clean expansion and did not have work requirements, and the administrative costs related to people being kicked off of and going back onto Medicaid, there would be another \$1.5 million in federal dollars that could go straight into healthcare provision. **Mr. Tatro** was unsure if not having the work requirement waiver would necessarily put more money into the system.

Chairman Martin reminded the Committee that their responsibility at this time is to either concur with the House amendments or not concur. The Committee is asked to return to the floor shortly with a statement about concurrence. At that time, Senate Leadership will decide when to debate **S 1204aa, aaH**.

Senator Jordan inquired if there would be separate motions for each of the three proposed amendments. **Chairman Martin** ruled that the Committee needs to simply concur with the House and would do so in one motion unless there were objections. Hearing none, he stated that a motion is in order.

MOTION: **Vice Chairman Souza** moved that the Committee **concur** with the House amendments to **S 1204aa**. **Senator Bayer** seconded the motion.

SUBSTITUTE MOTION: **Senator Jordan** moved that the Committee **not concur** with the House amendments to **S 1204aa**. **Senator Nelson** seconded the motion.

DISCUSSION: **Senator Jordan** stated that there are way too many concerns, especially with the amendment to Section I, to be able to go forward at this time. She expressed grave concerns about pulling people off Medicaid based on work requirements that have driven several states into court. Further, the added costs of these amendments are far beyond what a clean expansion would cost.

Vice Chairman Souza emphasized that the House only made some small changes that do not change the nature of this effort. She stated that if this Committee takes action to radically change or defeat this bill, the House is still holding the funding bill for Medicaid expansion. We are a bicameral system and should consider that functional reality.

Senator Burtenshaw declared that if he chooses to concur in Committee it would not determine his vote on the floor. He is not concerned that the House is holding the funding bill, adding it should not be a matter of hostage negotiation. The Committee needs to move forward and let the entire body have their say concerning this amendment

Chairman Martin informed the Committee that regardless of how they vote now, this bill will proceed to the full body.

**ROLL CALL
VOTE ON
SUBSTITUTE
MOTION:**

Chairman Martin called for a roll call vote on the substitute motion. **Chairman Martin** and **Senators Lee, Harris, Jordan,** and **Nelson** voted aye. **Vice Chairman Souza** and **Senators Heider, Burtenshaw** and **Bayer** voted nay. The motion carried.

ADJOURNED:

There being no further business at this time, **Chairman Martin** adjourned the meeting at 11:24 a.m.

Senator Martin
Chair

Margaret Major
Secretary