

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Thursday, January 21, 2021

**TIME:** 3:00 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Martin, Vice Chairman Riggs, Senators Heider, Lee, Harris, Agenbroad, Zito, Stennett, and Wintrow

**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 & Welfare Committee (Committee) to order at 3:01 p.m.

**MINUTES APPROVAL:** **Senator Heider** moved to approve the Minutes of January 13, 2021, **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:** Chairman Martin passed the gavel to Vice Chairman Riggs to introduce the rules.

**Vice Chairman Riggs** advised the dockets on the agenda are found in the pending rules review book. **Chairman Martin** asked when the Committee would finish its rules review. **Vice Chairman Riggs** responded the rules review will be complete on Monday, January 25, 2021.

**DOCKET NO. 16-0309-2002** **Rules of the Department of Health and Welfare, Medicaid Basic Plan Benefits**, p. 15. **David Welsh**, Bureau Chief, Bureau of Care Management, Division of Medicaid, Department of Health and Welfare (DHW), introduced himself to the Committee and stated the purpose of the docket is to remove references in the rules related to the Behavioral Health Transformation waiver. **Mr. Welsh** reminded the Committee it approved the same docket as a temporary rule in 2020. S 1204, enacted in 2019, mandated DHW to apply for a federal waiver to enable use of Medicaid funds to pay for substance abuse and/or mental health services in institutions for mental disease. **Mr. Welsh** reported DHW was required to engage an outside consulting firm to provide a fiscal analysis of the program changes to prove they would be cost neutral or save money, and DHW must submit proof of cost neutrality every quarter through the five-year waiver demonstration. He remarked DHW obtained approval of the waiver on April 17, 2020. **Mr. Frost** commented the waiver has expanded options for behavior health care to reduce opioid overdoses and suicide rates. He advised DHW did not conduct negotiated rulemaking, but DHW held public hearings and took public comment on the docket and public comments were overwhelmingly positive.

**DISCUSSION:** **Chairman Martin** asked Mr. Welsh how the docket benefits those with substance abuse disorder and suicidal tendencies. **Mr. Walsh** replied that prior to the waiver, someone experiencing substance use disorder would be required to present at an acute care hospital for treatment, the most expensive option for psychiatric treatment. He added with the waiver, DHW can offer specialized treatment focused on the needs of substance use cases at mental health facilities, which reduces the possibility of suicide due to the substance use disorder, he said.

**Chairman Martin** inquired if the entire program is cost neutral or less expensive. **Mr. Walsh** stated it is more cost effective to treat individuals with these disorders in institutions for mental disease and it is the least restrictive environment for patients. He added the entirety of the waiver program must be cost neutral, and savings are achieved by providing intermediate levels of care and services on an outpatient rather than acute care basis.

**MOTION:**

**Senator Agenbroad** moved to approve **Docket No. 16-0309-2002**. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
16-0309-2004**

**Rules of the Department of Health and Welfare, Medicaid Basic Plan Benefits**, p. 20. **Alexandra Fernandez**, Bureau Chief, Bureau of Longterm Care, Division of Medicaid (Division), DHW, introduced herself to the Committee. **Ms. Fernandez** said the docket has two objectives: 1.) Improve access to peer support and recovery coaching services for substance use disorder; and 2.) Implement new federal requirements for Electronic Visit Verification (EVV) for home health services. **Ms. Fernandez** stated peer support and recovery coaching applications are often denied due to the applicants having drug-related convictions resulting from personal experience with substance use disorder. She reported the docket would allow applicants to apply for variances and align the Division's rules with those of the Division of Behavioral Health (DBH), which has successfully implemented a comparable process. She commented the change would improve access to coaching services for participants and has no fiscal impact. **Ms. Fernandez** mentioned the Division received positive feedback during the public comment period and public hearing, along with one comment requesting that any provider approved through the Division's variance process also be approved to offer all Medicaid services. The Division is not able to accommodate that request due to conflicting requirements for other types of service providers, she said.

**Ms. Fernandez** advised the second part of the docket implements a federal mandate for personal care and home health service providers to use EVV to validate delivery of the services and reduce fraud and waste. She noted the federal government will impose an ongoing annual penalty of approximately \$1.5 million of State General Funds if the State does not implement the EVV mandate. **Ms. Fernandez** explained EVV is software that verifies a paid caregiver was at the expected time and place, providing previously authorized services to the correct participant. She said the docket establishes minimum standards for Idaho service providers to adopt EVV systems. **Ms. Fernandez** mentioned the 2020 Legislature approved EVV implementation expenses of \$2.4 million and a reimbursement rate increase for providers to offset costs incurred in adopting EVV platforms. She stated the Division engaged informally with stakeholders and conducted negotiated rulemaking and public hearings. **Ms. Fernandez** reported the Division received many provider comments, primarily regarding how the mandate would affect provider business operations and revenue. She added that comments from participants and advocates related to respect for participants' autonomy and privacy while using the technology. **Ms. Fernandez** explained the Division addressed these concerns by including provisions to improve training for participant technical support and requiring service providers to obtain informed consent from participants. She added the docket also streamlines the documentation requirements for Division programs because much of the documentation will be maintained electronically through the EVV platform.

**DISCUSSION:**

**Senator Lee** commented she recalls the prior budget appropriation for EVV and asked whether there was a single vendor selected for the project.

**Ms. Fernandez** replied the Division is contracted with the same vendor it uses for its claims system. She stated that vendor has a contract with Sandata to launch the EVV platform, and providers can choose any EVV vendor as long as the vendor is compatible with the Sandata platform.

**Senator Lee** asked when the penalties would begin and how many providers will be ready by the effective date of the rule so the State can avoid penalties.

**Ms. Fernandez** responded federal match penalties began on January 1, 2021 at the rate of 0.5 percent of currently applicable services. She added the approximate penalty amount incurred to date is \$60,000, and it is an escalating penalty. She commented the Division has disputed the penalty and requested flexibility because of delays in the contracting process due to COVID-19. **Ms. Fernandez** stated the number of providers who will be ready on July 1 is unknown, but the Department is actively engaged with nearly 100 percent of the enrolled providers. She added there may be some stragglers but the Department has a back-up plan to get them oriented quickly. **Ms. Fernandez** advised the Department has placed banners on its claims engine and messages on each provider's claims documentation to notify providers of the requirements.

**Senator Lee** mentioned she appreciates the Division's disputing the federal penalty and its methods of notifying the providers. She asked if the State would deny provider claims if the providers have not implemented EVV, allowing penalty dollars to be recouped from those providers.

**Ms. Fernandez** confirmed as of July 1, if a provider submits a claim without corresponding EVV data, the claim will be denied until the data is received. The federal penalty would be offset by denying claims from non-compliant providers.

**Chairman Martin** referred to pages 23-24 of the docket and said the factors to be considered for a peer support variance appear very subjective. He inquired how variance decisions will be made and who will make them, and whether a certain amount of time must pass after an applicant's conviction for the applicant to obtain a variance.

**Ms. Fernandez** replied the process for approving variances has not been developed but the docket was written to align with Division of Behavioral Health rules. She commented the requirements were purposely left subjective to permit a panel to evaluate the appropriateness of an individual. **Ms. Fernandez** stated a history of egregious or violent crimes would be grounds to reject the application.

**Vice Chairman Riggs** asked what type of devices will be compatible and commonly used with the EVV software.

**Ms. Fernandez** responded the most common software is smart phone based and global positioning satellite enabled to capture time in, time out, and location. She explained the software will identify a personal identification number assigned to verify the identity of the participant and the caregiver. **Ms. Fernandez** stated providers in remote areas without cell service will have alternatives. She reported the provider can install a bar code on a fixed object in a participant's home and use their device to check in and out on that object.

**MOTION:**

**Chairman Martin** moved to approve **Docket No. 16-0309-2004**. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
16-0310-2002**

**Rules of the Department of Health and Welfare, Medicaid Enhanced Plan Benefits**, p. 31. **Ms. Fernandez** explained the docket would update requirements for a skilled nursing facility seeking designation as a Behavioral Care Unit (BCU) and increase the BCU census requirement from 20 to 30 percent for new providers, along with implementing the new EVV requirements previously described. **Ms. Fernandez** reported BCUs serve high needs individuals with qualifying mental or physical disabilities in conjunction with challenging behaviors, defined as socially inappropriate, destructive, or physically or verbally abusive behaviors. A nursing facility applying for BCU designation would be required to demonstrate that at least 30 percent of its residents meet the criteria for challenging behaviors, she said. **Ms. Fernandez** added that the number of BCUs in Idaho has increased from 7 to 21 since 2018. She observed the change would incentivize providers seeking BCU designation to render services with no fiscal impact to the State. **Ms. Fernandez** pointed out the second part of the docket contains changes identical to **Docket No. 16-0309-2004** with the exception that the changes in Chapter 10 are specific to personal care services whereas Chapter 9 aligns with home health services. She remarked the Division received two comments supporting the BCU census change because it will enhance access to a BCU.

**DISCUSSION:**

**Senator Lee** commented she is very interested in this topic and asked for clarification on the change from 20 to 30 percent. She opined there is insufficient access to care in Idaho and asked about the outcome for facilities that are unable to increase capacity to 30 percent. **Senator Lee** inquired what would happen to the 20 percent of residents already in such a facility.

**Ms. Fernandez** reported a facility has flexibility at the 20 percent census requirement to decline to admit a patient, and the Division wants to incentivize providers to place challenging patients. **Ms. Fernandez** explained for facilities currently at 20 percent census, the Division would determine future reimbursement rates based on previous year's expenditures in conjunction with needs of the residents. **Ms. Fernandez** added such a facility would not qualify for designation as a BCU.

**Senator Lee** asked for provider response to the rule and stated it seems like a substantive change. She mentioned she had not heard of the rule change, and she usually hears from many of the providers about proposed changes.

**Ms. Fernandez** stated the issue was actively discussed in a work group comprised of nursing facility providers who want to enhance quality of care. She said the work group providers were all supportive of the change, which might seem surprising because of past disagreements. **Ms. Fernandez** advised the number of providers has outpaced expectations and the market is nearly saturated with BCUs, giving participants more choices while allowing providers to enhance quality.

**Chairman Martin** commented the statements about providers filling the market is surprising. He asked whether the two comments received at the public hearing were positive, negative, or neutral.

**Ms. Fernandez** replied the comments were supportive of the rule.

**MOTION:**

**Senator Lee** moved to approve **Docket No. 16-0310-2002**, with the exception of the changes in section 267.02. **Senator Agenbroad** seconded the motion.

**DISCUSSION:**

**Senator Lee** explained her motion was to strike the change from 20 to 30 percent on page 38. She asserted there is insufficient access to care in rural communities, and she has constituents in her district who lack services, resulting in people with violent tendencies not receiving proper care. She urged pausing on the change for one more year until there is further evidence of sufficient statewide access to care.

**Senator Wintrow** stated she does not understand how the change is helpful and expressed agreement with Senator Lee. She commented there is a second reference to the change in section 268.02 on page 39.

**Vice Chairman Riggs** asked Senator Lee if she would like to restate her motion. **Senator Lee** repeated her motion would require the facilities to meet all the requirements of the rule but would only strike the 30 percent language. **Vice Chairman Riggs** inquired if Senator Lee wanted to amend her motion to include Section 268.02.

**MOTION:** **Senator Lee** moved to approve **Docket No. 16-0310-2002** with the exception of the changes from 20 to 30 percent in Sections 267.02 and 268.02 and retaining the remaining language of those sections. **Senator Agenbroad** seconded the motion. The motion carried by **voice vote**.

**Vice Chairman Riggs** thanked Ms. Fernandez for an informative presentation.

**DOCKET NO. 16-0321-2001** **Rules of the DHW, Developmental Disabilities Agencies (DDA)**, p. 60. **Eric Brown**, Program Manager, Division of Licensing and Certification (DLC), DHW, introduced himself to the Committee. **Mr. Brown** described the duties of the DLC and mentioned Idaho has 72 certified developmental disabilities agencies operating in 169 locations. **Mr. Brown** stated the docket is the result of the Governor's Executive Order 2020-13 to identify temporarily waived rules that can be permanently eliminated. **Mr. Brown** explained the changes to the supervision requirements in Section 400.03 would eliminate the requirement for face-to-face supervision. He reported Sections 410.02.a and 410.02.d were deleted because the requirements are adequately covered in other sections of rule. **Mr. Brown** advised the rule is scheduled for a complete rewrite in 2021, and stakeholders will have the opportunity to participate in negotiated rulemaking.

**DISCUSSION:** **Chairman Martin** commented that the on-site, face-to-face requirement for supervision has been deleted on page 62. He asked whether it is preferable to have on-site supervision, or if remote supervision will suffice.

**Mr. Brown** replied the DLC has required face-to-face supervision in the past but it is difficult for one supervisor to locate staff dispersed throughout the community, while telework allows the supervisor to more easily observe staff providing services.

**Senator Wintrow** inquired if there was any negative input from stakeholders about the change.

**Mr. Brown** answered that the DDA did not receive any feedback of any kind.

**MOTION:** **Senator Harris** moved to approve **Docket No. 16-0321-2001**. **Chairman Martin** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO. 16-0417-2001** **Rules of the DHW, Residential Habilitation Agencies**, p. 65. **Mr. Brown** explained the duties of his team and stated Idaho has 81 certified residential habilitation agencies operating 124 office locations. He advised the docket permanently eliminates rules that were temporarily waived during the COVID-19 pandemic. **Mr. Brown** reported Sections 203.07, 203.08, 204.02.a, 204.02.f, and 204.02.j.(iii) are deleted because they are adequately addressed in or duplicate other sections. He added Section 204.02.h is deleted because there is no requirement for agency staff to ensure a participant's home is cleaned or maintained unless the participant has therapeutic goals related to housekeeping.

**MOTION:** **Senator Stennett** moved to approve **Docket No. 16-0417-2001**. **Senator Wintrow** seconded the motion. The motion carried by **voice vote**.

**Senator Lee** stated she voted on the prevailing side and requested a motion to reconsider the vote on her motion to approve **Docket No. 16-0310-2002** because she has identified another section of the docket to be changed. **Chairman Martin** replied the Committee would entertain her motion at the next meeting.

**PASSED THE  
GAVEL:**

Vice Chairman Riggs passed the gavel back to Chairman Martin.

**ADJOURNED:**

There being no further business at this time, **Chairman Martin** adjourned the meeting at 3:58 p.m.

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Senator Martin  
Chair

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Jeanne Jackson-Heim  
Secretary