Senate Health & Welfare Committee

Minutes
2006

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 11, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS PRESENT: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Kelly

MEMBERS ABSENT/ EXCUSED: Senator Werk

GUESTS: The sign-in sheet(s) will be retained in the committee's office until the end of the 2006 legislative session, and then will be maintained the Legislative Library (Basement E)

CONVENED: **Chairman Compton** called the meeting to order at 3:07 p.m.

Senator Compton welcomed the committee to another session of taking on the issues of health and welfare in the state. Senator Werk is absent because he is traveling to Pocatello to hear Senator Reed speak with advice and counsel for his party.

Senator Compton said he hopes the presentations over the next few days will be enlightening to the committee. If any committee members have particular interests they would like to see explained, let him know and he will make sure it happens. Last year, we started the precedent where during the four days of the Joint Finance Appropriations Committee presentations by the Health and Welfare Department, we were invited to sit in. **Senator Keough** said this is certainly encouraged of all the committees. **Senator Compton** found it very enlightening. As a follow up, the chairmen from the House and Senate germane committees were asked to give their own impressions and ideas of what they thought were priorities in finalizing the budget.

Senator Compton concluded the welcome remarks with his personal motto to try to do no harm, and if we're lucky, we might even do some good this year. He introduced **Dick Schultz**, **Administrator, Division of Health**, to talk about **Children and Adult Cystic Fibrosis, Adult PKU, and the HIV Aids Drug Assisted Program**.

Dick Schultz stated he is here with an update. The mini insurance programs are among the division's most controversial fiscal challenges because they help individuals in very narrow categories. There is hope that in the future these individuals will be transitioned from funding under the public health rubric to Medicaid Reform. This would leverage the federal fund and reduce reliance on the general fund.

Last year, S1079 would have repealed the department's responsibility to

pay for care for individuals with Cystic Fibrosis. The proposal was not approved and instead, $180,000 was appropriated to pay for this care. The legislative intent can be found on the second page of the handout (See Attachment #1, Page #2). The third page (Attachment #1, Page #3) shows a history of clients and expenditures. Of concern last year was the increase in expenses since 2002.

In 1978, the appropriation was $24,000 which covered the costs of care until 2003. Since that time, it has escalated due, in part, to the aggressiveness of the physicians staffing the clinics to get patients to comply with the prescribed medication regiment. The greater the compliance, the less acute hospital care will be needed.

As shown on the next page (Attachment #1, Page #4), the majority of the costs (around 74%) are for medication. If the state didn't pay for the costs of that medication, presumably all those patients could have gone onto pharmacy assistance programs. Given the appropriation, however, all the patients are currently being served.

Senator Compton asked for clarification on the pharmacy assistance programs option.

Dick Schultz responded that if the state did not provide medications then the individuals would have been eligible for pharmacy assistance programs offered by drug companies. They would have to apply to and participated in a co-pay, but the option was open nonetheless.

The current co-pay chart is on the next page (Attachment #1, Page #5) and it shows the amount individuals are expected to pay based on their income. There is little interest in trying to either increase the co-pay or reduce the eligibility for these individuals.

We spoke with the three physicians who staff the clinic at St. Luke's. Seventy-five percent of our patients are seen in that clinic. The three doctors are paid Medicaid rate. They are concerned about taking a reduced payment, so we do not plan to reduce the payment to those physicians below what Medicaid is reimbursing. Clinic costs make up 20% of the total costs.

Because medications are our greatest cost area, St. Luke's has offered to enter into a 340-B option called Public Health Service Drug Discount Program through which pharmaceutical firms that sell drugs to facilities providing services for government entities and low-income populations are required to discount the price for the drugs. St. Luke's is willing to pass on the savings, which averages 28% less than what we currently pay private pharmacies. As of now, there is no statutory authority to require patients to use St. Luke's pharmacy.

In summary, the options to reduce the demand for general funds in order of importance are to reform Medicaid; to change the statute and require use of our clinics; and to restrict drug payment to pharmacies with 340-B pricing on drugs. Lastly, we may want to consider changing our rules on eligibility and co-pay. Nothing will be implemented or proposed this year because we are waiting on Medicaid reform. For now, we are requesting

$108,000 in general funds to pay for care in FY07.

Senator Broadsword noted the $108,000 request is lower than last year's $180,000 appropriation. The reduction is because you're getting the medication cheaper.

Dick Schultz affirmed.

Senator Compton believes Medicaid reform will happen but it will take time to implement, so why wait for it to happen?

Dick Schultz said this was an opportunity to gauge reactions to what those proposals may be. If there is support for restrictions on pharmacies or changing eligibility and co-pay requirements, we'll certainly do that, but only with support from advocates of the program and the legislature. We're asking for guidance. Both could roll over into Medicaid reform.

Senator Brandt asked for clarification on what a 340-B pharmacy is.

Dick Schultz explained it is a pharmacy that provides services for government entities and are allowed a preferred pricing through drug manufacturers.

Senator Brandt asked if it is based on size.

Dick Schultz said it is not. It is based on the relationship to a government entity and a population that is served. Anyone that we contract with would be eligible for 340-B.

Senator Brandt asked how this would affect rural pharmacies. Would this preclude them because they are outside the population base?

Dick Schultz said it would not. Seventy-five percent of our patients are being seen in St. Luke's and the patient has to be established with that pharmacy, but once established, the drugs could be mailed to them. We could try to establish relationships with other pharmacies, but it might not be cost effective because the volume of patients is low.

Senator Coiner asked about the decrease in patients shown on page 3 of the handout.

Dick Schultz explained page 3 reflects only half of the fiscal year. By the end of FY06, projections show an increase to about 48.

Senator Coiner said he thought treatments were on an ongoing basis.

Dick Schultz explained the numbers are based on payments made on behalf of individuals thus far in the fiscal year, not necessarily on the individuals themselves. We are about 3 months behind right now, so there is a lapse.

Senator Kelly said it is hard to understand the number of people being served, based on the chart.

Dick Schultz explained that is the number of unduplicated individuals we pay bills for.

Senator Compton asked if the date “12-31-06" was a typo.

Dick Schultz said it was.

Senator Keough asked about the meeting this summer and why co-pays were not generally supported.

Dick Schultz said they talked to advocates, not necessarily the clients.

Senator Keough asked whether the advocates were related to the client or to an association. As they deliberated, did they understand that the program might go away altogether if they were unwilling to accept more of the costs?

Dick Schultz said they were not related to the clients. In the CSHP summit this summer, there was never a fear that the services for children with special health care needs would completely go away without co-pay.

Senator Keough asked if the people knew about last year’s legislation.

Dick Schultz didn’t think anyone assumed that the program was at risk because the bill was defeated in its first hearing and because of the subsequent $180,000 appropriation. The thrust of the Summit was to find the most efficient way to use those services.

Senator Darrington said as a result of the hearings last year on this, is it your sense that with this minuscule appropriation we are doing a remarkable amount of good for a handful of people with severe medical needs which would not be otherwise met?

Dick Schultz stated this program has significantly changed the lives of adults with CF.

Senator Compton expressed appreciation for last year’s testimony by the young man in the wheelchair. He has used this story often to illustrate the issues this committee and others face. We come face-to-face with reality through some of the people who come to us with problems we cannot possibly comprehend. We will help those people.

Dick Schultz said the value of these programs is to prevent these individuals from collapsing into higher levels of care.

The next program, the **Adult PKU Program**, faces a problem because currently there is no statutory requirement to provide PKU formula to adults. PKU is a genetic disease that causes an individual to fail to metabolize protein correctly, and it can have severe neurological impacts. Until ten years ago, it was thought that once a child reached adolescence, they no longer needed the dietary supplement. However, it has since been found that without the supplement, adolescents and adults lose IQ. As a result, we started serving patients 18 years and older, which created a financial dilemma. We need to decide whether to continue providing

this formula.

On page 10 (Attachment #1, Page #10) are our costs per case. This is a huge discount from the cost in the private sector. The amount prescribed is based on an individual's dietary habits, so they can consume between two and six cases a month and we pay the bill.

So, the question this session with our general fund request to be $6,000 for FY07 is: should we continue to provide PKU formula to these adults with the same criteria as our CF patients?

Senator Compton asked if there is a co-pay now.

Dick Schultz stated there is. As their incomes reach 300% of the poverty level, they pay the whole bill.

Senator Brandt asked for clarification on the page 11 chart.

Dick Schultz stated receipts (REC) are from drug rebates.

The Summit decided the payment for care should be under Medicaid, not Public Health. We will continue to pay for care for children until they can be transitioned into a Medicaid program.

Senator Broadsword asked if children with diabetes are considered children with special needs.

Dick Schultz stated they are not.

Finally, the **AIDS Drug Assistance Program**: the number of AIDS cases in Idaho continues to go up about 30 cases every year. The number of patients eligible goes up along with the number of patients at a rate of 13%. In 2006, the number of eligible patients dropped dramatically due to Medicare Part B. But the number of patients served was still more than in 2005, so costs increased.

Our anticipated appropriation this year is $601,000, which translates into $153,000 in drug rebates. From a public health perspective, if we provide patients with these medications, it drops their infectivity by lowering their viral counts.

Senator Compton commented on current medical trends and the increasing awareness of HIV and its treatments in Idaho.

Dick Schultz stated people are living longer and better with HIV than ever before.

Senator Compton asked if Mr. Schultz was looking for direction on this.

Dick Schultz stated affirmatively.

Senator Compton introduced **David Butler, Administrator, Division of Management Services,** updating the committee on **Legislative Audit Findings**.

David Butler reviewed the nine findings and one previous finding addressed in a meeting in October 2005 (Attachment #2). Out of those nine findings, four are now closed. Three are awaiting federal approval and two are open and should be closed soon.

Senator Compton asked how much money has been saved through Finding #9 (Attachment #2, Page #6) by hiring State staff instead of contracting for information technology (IT) services.

David Butler reported $188,000 in savings to date, although they had initially projected to save just $115,000 for the whole year.

The final finding (#10), concerning Food Stamps, is shown in a chart (Attachment #3). We are subject to a $138,000 sanction which was recommended in the governor's budget. We are striving to improve.

Senator Compton asked why it has not improved more significantly.

David Butler explained the error rate for food stamps is usually due to a miscalculated eligibility requirement, often an error on the low-side. Also, the error rates are determined based on 33 randomly-selected cases per month, even though the monthly case average is 93,000.

Senator Brandt referred to Finding #8 for clarification on what is considered in-patient costs and child care costs.

David Butler explained we are not allowed to pay for day care costs unless the guardian is using the time for specific activities to improve themselves. Rather, the problem was how we made the payments. Each must be reviewed individually. We didn't have that process in place, but it has been improved.

In regards to the in-patient treatment costs, I don't have the specifics but I can get them for you.

Senator Compton commended the progress being made. He introduced **David Rogers, Administrator, Division of Medicaid** to give an **Update on Medicaid Reform and the R&D positions within Medicaid.**

David Rogers stated he will explain the governor's intent for Idaho to be a model for Medicaid reform, what is significant about it, and how it will move forward. He introduced the development team present with him.

Senator Compton explained the creation of the Research and Development department in Health and Welfare, funded by JFAC last year to aid in the reform.

David Rogers introduced **Leslie Clements, Deputy Director; Patty Campbell, Senior Project Manager; Kate Vanderbratt; Phyllis Stevenson; Ann Evans; Kathy Libby; Michelle Trevor; and Kris Roberts.**

Senator Compton asked **Phyllis Stevenson** to explain what she does in

her position.

Phyllis Stevenson stated that she is trying to formulate a health-risk assessment which lets individuals open a personal health account, like a health savings account, in order to access health insurance.

Senator Compton expressed his delight to see a management team with such a good reputation.

He said people often ask him what this new program is going to cost tax payers. As he understands it, this should lead to savings.

David Rogers agreed. The idea is to take the One-Size-Fits-All program and break it into three parts: one for low-income children and working age adults who fit income eligibility requirements; one for citizens with disabilities and special health needs; and the third for elders.

In FY07, there will be a slight impact to low-income children and working-age adults. For individuals with disabilities and special needs, there will be no difference after the reform. And there will be some very modest change, reduction in the rate of growth, for the elders.

There is some concern that there will be eligibility and service cuts because traditionally, that is how Medicaid problems are remedied. With the leadership of the governor, however, this should not be the case.

In Social Security Act section 1902, relating to how states should structure Medicaid, uniformity is required over various geographic areas in the state. This has been flexible, however, and Idaho is a diverse state and should be dealt with accordingly.

The section later states that any Medicaid beneficiary can go to any qualified provider for services. This is also flexible and we can now manage care. We are considering ways to create and manage networks of providers as a cost-containment and quality-improvement measure.

The section also states that the State must offer benefits equally to all eligible individuals (comparability). The proposal by the governor abolishes this concept because it has been a barrier.

What makes Idaho's proposal significant is that it bases eligibility on health needs.

Senator Broadsword asked if it would allow seniors to have drugs delivered or shipped through the mail.

David Rogers stated mail order is allowed. Removing comparability would allow the creation of a specific program for home-bound patients without having to offer the same service to all recipients.

He continued by recapping the history of the discussions leading to the proposal. The proposal has been met with good reception from federal agencies. Input is welcome from organizations and individuals with questions.

The document is available at the following web address: modernizemedicaid.idaho.gov. Committee members are encouraged to become familiar with it.

Senator Kelly expressed appreciation for the information available on the website. She is hoping for meaningful reform that will provide fiscal responsibility while protecting our vulnerable population. Constituents are frustrated with the generalities which are often used to describe the reform, and she fears legislation will be introduced before there is a chance to grasp the details. Public comment on generalities is great, but the devil is going to be in the details. Opportunities for clarification are encouraged.

David Rogers said people need to ask, "details about what?" in order to get their specific concerns addressed.

The approach is to find the populations and fit them within the proper policy goals, then develop the benefit structure and delivery system. We would appreciate feedback on the general policy goals.

Senator Compton asked if the Committee has the policy goals.

Senator Kelly said they received a copy in the mail.

Senator Compton commended Mr. Rogers and spoke on concerns voiced around the State in the rising costs of health care, both public and private. This committee is very important because of these rising costs.

He introduced Chris MacMillan, the page for the first half of the session. He is from Twin Falls and is sponsored by Senator Coiner. Also, Kathryn Whittier will assist Joy Dombrowski, committee secretary.

Senator Kelly asked about rules.

Senator Compton spoke on the rules agenda.

Senator Broadsword announced that the Residential Assisted Living Rules will be open for testimony by constituents on January 24.

ADJOURN: Being no further business, the meeting was adjourned at 4:49 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 12, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: Kathleen Allyn, Randy May, Greg Kunz

CONVENED: **Chairman Compton** called the meeting to order at 3:04 p.m.

Senator Compton introduced **Kathleen Allyn, Regional Director of the Department of Health and Welfare - Region Four**, to speak to the committee about the **implementation of the Medicare Prescription Drug Act**.

Kathleen Allyn said November 15, 2005 marked the beginning of the enrollment period for Medicare recipients to choose a drug plan. The enrollment period will close May 15, 2006. January 1, 2006 marked the first day of coverage of the drug plan. Significantly, all Medicare recipients who are also on the state Medicaid program will now receive their prescription drug coverage from Medicare.

Several public and private entities are working closely together to diffuse information on the program and to help eligible recipients enroll in the appropriate plan. Over 20,000 contacts have been made, including one-on-one assistance and attendance at group presentations. There are more than 100 enrollment sites throughout the state (Attachment #1). Several legislators, including Senators Darrington and Werk, volunteered at special informational events.

Although the program is functioning, it is not without problems. Our staff has often been the first to find a problem and we work with the Centers for Medicaid/Medicare Services to fix them.

One current problem is that prescription drug plans have difficulty distinguishing when a person is a low-income or Medicaid client. The information has been slow to enter databases, and as a result, some individuals cannot afford to pay the up-front costs at the pharmacy even though they would later be reimbursed. These issues are being resolved on a case-by-case basis.

Senator Coiner asked whether individuals who had not signed up for a carrier would be assigned one.

Kathleen Allyn explained that dual-eligible individuals (clients who qualify under both Medicaid and Medicare) were automatically assigned a plan, and in some cases, the assigned plans might not have had a contract with the pharmacy in their town or did not cover the drugs the individual was taking. When we contact the client's caseworker, we enroll them in a different plan which fits their needs.

Senator Werk asked whether any plans allowed for medications to be sent via mail.

Kathleen Allyn affirmed.

Senator Coiner expressed concern over the variations in the cost of the plans (Attachment #2). Some plans could cost more in the end than no coverage at all.

Senator Compton said there is an insurance component which confuses the issue. We will throw light on this.

Senator Coiner expressed concern that market competition may have been ignored in the development of the plans.

Greg Kunz, Deputy Administrator Division of Welfare, took the podium to talk about **Self-Reliance Programs**. The Medicare drug program is in the start-up phase of enrollment and 40 individuals have been hired to help in the process. Thirteen are permanent positions and 27 are temporary, ending with the fiscal year.

Senator Compton asked for the total number of people working on Medicare Part D and whether they covered various regions.

Greg Kunz stated the 40 new individuals, spread around the state, are primarily responsible for Part D, but existing case workers occasionally deal with Part D issues as well.

Senator Compton asked whether the division knew who the Medicare recipients are throughout the state.

Greg Kunz affirmed knowledge of Medicaid clients only.

Senator Compton asked how many Medicaid clients are in Idaho.

Greg Kunz stated there were 17,000 dual-eligibles. The average monthly case count for Medicaid is 171,000.

Senator Compton stated that individuals who are Medicaid eligible are likely to be eligible for Medicare as well. Does the State know how many people might possibly take advantage of Part D?

Greg Kunz stated there are 194,000 individuals on Medicare, 17,000 of whom are also on Medicaid. Another 6,000 individuals not on Medicaid are part of a savings program and come to us for help with Medicare premiums. In sum, we know of 23,000 Health and Welfare clients with open cases.

Senator Compton asked how to measure success in terms of enrolling the individuals who will benefit from the program.

Greg Kunz explained that since it is not a mandatory program, spreading information of its availability is the best way to promote its success.

Senator Kelly asked whether the division knows who the dual-eligible recipients are.

Greg Kunz stated that he has no individual names of Medicare eligibles, unless they have Medicaid cases.

Senator Kelly stated that insurance companies have their names and are marketing to them.

Greg Kunz referred to the marketing campaigns insurance companies use to attain names.

Senator Compton again asked about how the success of the program can be measured.

Kathleen Allyn responded that although the state has little individual knowledge of Medicare recipients, the federal government has given the estimate of 194,000 individuals. As enrollment continues, the numbers will become more clear.

Greg Kunz echoed concerns with number-tracking this early in the program's implementation. Of the dual-eligibles, in the first six weeks, we have provided 4,705 individuals with information and have enrolled 2,265 individuals. Of Medicare-only individuals, we have helped 3,525 individuals. This totals 8,257 individuals.

Senator Kelly asked how the 40 new positions are being funded.

Greg Kunz replied the money from the general fund is matched equally by federal dollars.

Senator Darrington expressed concern that individuals who fail to sign up immediately, perhaps because their current drug costs are low, will be penalized when they need to sign up later for various reasons. What happens when an individual becomes a Medicaid recipient but is not eligible for the maximum benefit because of the penalty?

Kathleen Allyn explained that once an individual becomes Medicaid eligible, there is no premium they would have to pay. There is a one percent penalty per month for every month an individual is not enrolled but is eligible for Part D, but once they become Medicaid eligible, this penalty goes away or else the State would have to pay it.

Senator Darrington asked what happens to an individual with a medicinal need, who cannot afford the drugs but is not yet Medicaid eligible.

Kathleen Allyn said they could apply for a low-income subsidy.

Senator Werk stated the Medicaid website displays plans which may fit the needs of individuals in Senator Darrington's hypothetical, without extra costs. In his service as an enrollment volunteer, Senator Werk witnessed how complicated the process is and how much help will be necessary in order to meet the May 15 deadline.

Randy May, Deputy Administrator Division of Medicaid, then addressed the committee about problems in the system which are undergoing repair.

Senator Compton asked about communication with the federal government about the glitches in the program.

Randy May said their communication is constant and responsive.

Randy May continued by explaining a client-advocate system which has been developed to aid some of the problems clients may go through in getting their drugs. In certain cases, he must give approval to use state funds to pay the copay and the deductible so the client can get the drugs he/she needs. He tracks this and bills the Plan to reimburse the State. The issue, however, is how to fund it upfront. Since January 1, fifty cases showed need for this method of funding and eight were approved, totaling about $2,400.

The 2006 supplemental is in place as requested to convert automated systems and to hire professional consultants for matching plans to clients. Ninety-thousand letters were sent out to notify people of possible eligibility for the program, and 20,000 were returned as applications. Fifteen-thousand applications have been reviewed and 4,600 have been found eligible. We are now waiting for the 4,600 to sign up for a plan.

Senator Compton asked whether care-givers are being educated as to the eligibility of those with whom they work.

Randy May affirmed.

Senator Compton asked if there is any good news on savings produced by the program.

Randy May said he thinks so.

Kathleen Allyn stated that according to studies conducted on the program, three out of every four Medicare eligibles will benefit from it. Ultimately, the program will save most people money, as long as the plan matches the needs of the individual.

Senator Compton asked about a monthly fee.

Kathleen Allyn said the average premium is $32/month, but it varies by plan.

Senator Compton expressed concerns that the May 15 deadline will bring an avalanche of enrollment.

Senator Coiner expressed concern about the varying premiums and overall costs. It may cause confusion among the applicants.

Senator Compton asked how insurance companies are involved.

Kathleen Allyn explained the drug plans are actually insurance products.

Senator Werk pointed out that while individuals in the plan are saving money, tax payers are not. Inflexibility in the system is a concern.

Senator Compton expressed appreciation for the work of the presenters. He asked if there is anything the legislature could do to help.

Randy May said there would be personnel and funding discussions.

Senator Compton introduced the topic of **Inspections of Residential and Assisted Living Facilities**, also to be presented by **Randy May**.

Randy May stated that the main concern in regard to this topic is how the resurvey process impacts assisted living facilities.

Slide two (Attachment #3, Page #2) reflects the system as it was before the statute change in 2005. The change allows us to focus on the issues that pertain to safety and resident rights (Attachment #3, Page #3). By rewarding facilities which consistently pass the survey, we can focus more on improving the facilities with problems.

Slide four (Attachment #3, Page #4) reflects the increase in surveys as a result of the new process.

Senator Compton questioned how there are 271 facilities but 400 visits.

Randy May said that includes complaint investigations. He went on to discuss overall quality (Attachment #3, Page #5). Core deficiencies (the "deadly sins") are graphed on slide six (Attachment #3, Page #6).

Senator Kelly asked whether the problem on line one had to do with paperwork or problems in care-giving.

Randy May said there was no paperwork. Care was being delivered but nobody knew what the care was.

Senator Brandt asked what was being billed for, if billing is based on care given.

Randy May affirmed that billing is based on care given. In this case, the bills were being sent but there was nothing to back them up.

Senator Compton asked about the differences between items one, two, and three.

Randy May explained that in item one, there were no negotiated services. In item two, there no plan of care developed nor any assessment of residents' needs. In item three, there was an initial

assessment, but the plan failed to match the needs.

Senator Broadsword referred to H265 last year wherein one of the goals was for the department would help the facilities comply. Is it happening?

Randy May stated yes. He continued to slide seven (Attachment #3, Page #7) which deals with non-core deficiencies.

Senator Compton remarked on the seriousness of some of the non-core issues.

Senator Kelly asked about the administration of medication by unlicensed staff.

Randy May said that there were facilities where a person who was not licensed to administer medicine was delegating to a person who was not trained to deliver it. There is a specific course to go through in order to assist in administering medications.

Many facilities are concerned with how tough the surveys are. Slide 8 shows past enforcement actions (Attachment #3, Page #8).

Senator Werk mentioned that the department has a very upset community. Has there been communication with the community?

Randy May said he has met with various entities to discuss their concerns. The Department is interested in coming up with a consensus.

Senator Compton asked how long ago the department asked for input.

Randy May said the draft rules were published on August 19 for feedback. Hearings were held on October 12, 13, and 17 and it became clear that some did not like the rules. The Department recieved over 250 comments, of which 230 were actionable. Of the 230, 110 comments were incorporated into the rules. They were republished on October 31.

Senator Werk referred to a public forum where constituents showed him a packet of information which was sent to the department but the department claimed to have not received.

Senator Compton said these rules will be discussed on January 24.

Randy May continued to the last two slides which show provider feedback and give a summary (Attachment #3, Pages #9 and 10).

Senator Compton asked whether some rules which predate the new ones, but which came to light as individuals reviewed the new ones, brought about some of the contention.

Randy May agreed.

Senator Compton suggested holding a forum prior to the January 24 hearing. Rules review begins Monday.

ADJOURN: Being no further business, the meeting was adjourned at 4:26 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 16, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s) and/or booklets, charts and graphs, will be retained in the committee's office until the end of the 2006 legislative session, and then will be on file with the minutes in the Legislative Library (Basement E)

CONVENED: **Chairman Compton** called the meeting to order at 3:04 p.m. having a quorum present. Rules review begins today. **Vice Chairman Broadsword** will take the Chair to hear all rules.

RULE # 27-0101-0501: **Mick Markuson, Executive Director of the Idaho State Board of Pharmacy,** stated **Rule 27-0101-0501, Rules of the Idaho Board of Pharmacy - Notice of Rulemaking** (Pending), outlines and further defines a positive identification process for patients receiving controlled-substance prescriptions from their pharmacies. Page 80 of the rule, Definition 10, (Page #79-80) defines the term "prescription." The last line is struck because it is further defined in two rules on page 81: Definitions 463 and 464.

Definition 464 explains the process of identification which is to be required for individuals receiving a prescription in order to avoid prescription fraud. This aids the controlled-substance investigator in the identification of individuals involved in prescription fraud.

MOTION: **Senator Darrington** moved that we approve Rule 27-0101-0501. **Senator Coiner** seconded. The rule was approved unanimously through a **voice vote**.

RULE # 27-0101-0502: **Mick Markuson, Executive Director of the Idaho State Board of Pharmacy,** said **Rule 27-0101-0502, Rules of the Idaho Board of Pharmacy - Notice of Rulemaking** (Pending), is a housekeeping rule. Page 84 of the rule shows struck language which has been changed to coincide with Medicaid's new language.

MOTION: **Senator Coiner** moved that we accept Docket 27-0101-0502. **Senator McGee** seconded. The rule was approved unanimously through a **voice vote**.

Senator Compton and **Mick Markuson** discussed the possibilities of

upcoming pseudoephedrine legislation, remarking on the successes of Oregon's legislation.

Senator Broadsword asked what impacts the legislation might have on pharmacists.

Mick Markuson said that in most bills, the drug is only required to be kept behind the counter and not required to be sold only by a pharmacist.

RULE # 16-0210-0501:

Leslie Tangelson, **Deputy State Epidemiologist, Division of Health, Department of Health and Welfare**, addressed the committee on **Rule 16-0210-0501, Rules and Regulations Governing Idaho's Reportable Diseases** (Pending). Her testimony is included as an attachment (Attachment #1).

Senator Darrington asked how Tularemia is used as a terrorism agent. Can it be synthesized in a laboratory setting?

Leslie Tangelson said Tularemia is much more likely to be acquired the natural way (through skinning a rabbit), but the Center for Disease Control has included it in its list of potential agents of bioterrorism. Although terrorists are more likely to use more lethal agents, like Anthrax or Plague, it remains one of the diseases of concern.

Senator Darrington asked how frequent Hantavirus cases are in Idaho.

Leslie Tangelson answered that there are one to three cases each year, one of the highest rates in the nation.

Senator Broadsword asked about the Noravirus rule on page 47, D. Does that include children who attend the day care or only people who handle food at the facilities?

Leslie Tangelson said it refers to children attending the facilities and the people providing care. It does not pertain to food employees.

Senator Brandt asked about the change in terminology from "food handler" to "food employee," expressing concerns that discrepancies will appear between the modified rules and the Food Rule.

Leslie Tangelson stated all terminology is being changed from "food handler" to "food employee" to conform with the Food Rule language. The definitions sections has been changed likewise.

There was further discussion as to where the terminology might be in discrepancy. **Senator Brandt** expressed worries that there may be several rules which will need to be changed in order to coincide.

Senator Broadsword asked **Dr. Tangelson** about a list of ailments which employees must not have if they are to work with food. Have there been any public comments on them?

Leslie Tangelson said there have not. These changes, again, are to align the language with the Food Rule.

MOTION: **Senator McGee** moved that we approve Docket 16-0210-0501. **Senator Compton** seconded. The rule was approved unanimously through a **voice vote**.

RULE # 16-0503-0501: **Senator Broadsword** introduced **Bill Walker, Deputy Director, Department of Health and Welfare,** to present **Rule 16-0503-0501**, **Contested Cases Proceedings and Declaratory Rulings** (Pending). His testimony is included as an attachment (Attachment #2).

Senator Compton asked what prompted the change to this rule.

Bill Walker said there was confusion on the 28-day requirement, especially when an appeal is filed by mail.

Senator Compton hopes that the rules will remain flexible.

Senator Brandt asked if there have been any objections to the rule.

Bill Walker said of the two comments received, neither were objections.

Senator Darrington asked about the distinction between "shall" and "must."

Bill Walker said "must" was a clearer indication that an action would take place. He then yielded to **Jeanne Goodinogh** who said "shall" is no longer allowed and "must" implies an affirmative action.

MOTION: **Senator Compton** moved that we accept Docket 16-0503-0501. **Senator Werk** seconded. The rule was approved unanimously through a **voice vote**.

RULE # 16-0203-0501: **Senator Broadsword** introduced **Dia Gainor, Emergency Medical Services Bureau Chief, Department of Health and Welfare,** to present **Rule 16-0203-0501** governing **Emergency Medical Services** (Pending). Her testimony is included as an attachment (Attachment #3).

Senator Broadsword asked what is meant by, "each licensed EMS service must develop written criteria." Is this a plan of action for each EMS Unit?

Dia Gainor explained the term of art generally used is "protocols," instructions that are specific to patient conditions. We chose to use "criteria" instead of "protocol" because "protocol" has been used in our industry in law suits against the EMS provider.

Senator Broadsword asked if this was a new regulation or different wording for what is currently being done.

Dia Gainor answered that in most cases, it is just different wording for what is already being done. Some agencies have very sparse protocols and others are quite comprehensive. This rule creates a level playing field.

Senator Werk asked, if we have 100 different EMS providers, could we

have 100 different sets of criteria throughout the state?

Dia Gainor said this was at the heart of the controversy. There has been considerable resistance to having statewide regulations. We eliminated that section from these rules and instead, what the rule ensures is that every agency considers all of the same categories of patients, to be applied in each community in a way which suits them given their available resources.

Senator Keough asked if these rules prevent any agency other than EMS to call an air ambulance.

Dia Gainor said they were very deliberate to make sure they didn't prohibit anyone else's abilities to call for services. The State Police sat on the task force. We are only addressing and regulating certified EMS personnel in this rule.

Dia Gainor further explained that the Idaho Sheriffs' Association and the Idaho State Police may incorporate the training program into their disciplines, although it would not be mandatory.

Senator Compton said that in the past, there has been concern that restricting authority on who could call for an air ambulance might put safety at risk.

Dia Gainor said the services are not being limited in any way.

Senator Brandt asked whether there has ever been an issue with air ambulances being called when unnecessary.

Dia Gainor stated that in researching how air ambulances were being used around the state, large inconsistencies were discovered, varying from jurisdiction to jurisdiction. This prompted the breadth of issues included in these rules. Insurance companies do not take the final diagnosis into account in justifying the air ambulance, but rather the patient's presentation at the scene. This keeps frustrations low regarding the unnecessary use of an air ambulance.

Senator Darrington asked about the Trauma Registry Implementation program. **Dia Gainor** gave a brief update and explanation to the committee on what function the Registry program serves.

Senator Compton asked what prompted Rule 16-0203-0501.

Dia Gainor said Representative Henbest's initiative in H697 caused the rule-making to minimize inconsistencies with the use of the service between agencies. There was no standardized training to teach new Emergency Medical Technicians when, how, and why to call a helicopter.

Senator Compton asked whether the emergency services in Spokane had a part in the rule-making process since they serve Idaho as well since Spokane serves much of Northern Idaho.

Dia Gainor said a representative from Spokane sat on the task force and

attended every meeting.

Senator Broadsword asked about how many people testified at the eight town hall meetings and whether their concerns were met.

Dia Gainor stated they received 70 formal comments, 24 of which were from local EMS agencies. Kooskia produced the most negative comment which asserted that calling an air ambulance was simply a matter of common sense. It was thereafter determined by the task force that the decision is not, in fact, just a matter of common sense.

MOTION: **Senator Coiner** moved that we accept Docket 16-0203-0501. **Senators Werk and McGee** seconded. The rule was approved unanimously through a **voice vote**.

Senator Compton updated the committee on the presentations by the Department of Health and Welfare to the Joint Finance-Appropriations Committee. **Senator Werk** said the need for more mental health beds came up in JFAC today. Without providing the beds, the state must pay private psychiatric facilities which are considerably more expensive. **Senator Keough** added that these services are usually best delivered and more cost-effective at the community level. **Senator Compton** agreed with **Senator Brandt** that substance abuse and mental health go hand-in-hand, particularly regarding rehabilitation.

ADJOURN: Being no further business, the meeting was adjourned at 4:30 p.m.

Senator Dick Compton Chairman	Joy Dombrowski Secretary

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 17, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Keough, McGee, Werk, Kelly

ABSENT/ EXCUSED: Senators Brandt and Coiner

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:06 p.m. **Vice Chairman Broadsword** took the Chair.

RULE # 16-0301-0501: **Linda Palmer, Program Specialist with the Division of Welfare of the Department of Health and Welfare,** introduced **Rule 16-0301-0501, Eligibility for Health Care Assistance for Families and Children** (Pending). Her testimony is included as an attachment (Attachment #1).

Senator Compton asked what prompted the change.

Linda Palmer replied that there are many uninsured children in Idaho. Removing the asset test is a key indicator in why individuals are denied access to insurance. Enrollment is disappointingly low so there is room to add these children to CHIP B.

Senator Compton requested an explanation of the asset test.

Linda Palmer said the asset threshold is currently $5,000 which includes neither the home in which the child lives nor the family automobile, allowing up to two automobiles in a two-adult household.

MOTION: **Senator Compton** moved to adopt Docket 16-0301-0501. **Senator McGee** seconded the motion.

Senator Broadsword asked approximately how many children would benefit from the changes.

Linda Palmer estimated that 1,800 children over the next three years would be eligible with the removal of the asset test.

The motion was approved unanimously through a **voice vote**.

RULE # 16-0305-0501: **Linda Palmer, Program Specialist with the Division of Welfare,** also

presented **Rule 16-0305-0501, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled- Work Incentives (AABD)** (Pending). Her testimony is included as an attachment (Attachment #2).

Senator Compton referred to a piece of legislation from last year which provided a formula for disabled individuals with employment to maintain Medicaid benefits. He said this rule seems similar, on a more modest scale. He asked, "Is there a difference?"

Linda Palmer said this rule is only a small piece of providing work incentives for the disabled. She yielded to **Patti Campbell**, **Senior Project Manager in the Division of Medicaid of the Department of Health and Welfare**.

Patti Campbell stated this rule would apply to both individuals who receive medicaid and those who do not. The maximum number of people which this rule would apply to is only 600 because they must receive a cash grant and be eligible for Social Security Disability, but not receive Social Security Supplemental Income (SSI). The rule should have been implemented a few years ago because it was federal rule which was overlooked.

MOTION: **Senator Werk** moved to accept Docket 16-0305-0501. **Senator Keough** seconded the motion. The rule was approved unanimously through a **voice vote**.

Senator Broadsword announced a change to the agenda, as follows.

RULE # 16-0305-0601: **Peggy Cook, Program Manager in the Division of Welfare of the Department of Health and Welfare,** spoke on **Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled - Personal Needs Allowance** (Temporary Rule). Her testimony is included as an attachment (Attachment #3).

Senator Broadsword asked if others wished to testify.

Jim Baugh, representing **Co-Ad Inc. Disability Advocacy Services**, testified in support of the rule. Individuals whose drugs were previously paid for by Medicaid now have to make copays, and this money comes from their personal needs allowance. Individuals with several prescriptions have difficulty paying for them all with the $67/month discretionary income they now receive. By increasing their monthly allotment to $87, they are better-able to afford their prescriptions. It is not just about copays, however. Eighty-seven dollars per month is not an outrageous amount for a person to spend on personal needs.

Senator Compton expressed support for the rule and asked for Mr. Baugh's view on the trend toward copays.

Jim Baugh stated that copays are becoming more frequent and the ramifications that the copays have on low-income individuals could be dangerous. Lower-income individuals are more likely to forgo necessary medications in order to meet the copay than are higher-income individuals.

Senator McGee expressed concern that cigarettes are among the items individuals might spend their money on.

Senator Werk stated that although smoking is an addiction, it is a problem when people must choose between cigarettes and a much-needed drug when they have only a limited amount of discretionary money each month.

Jim Baugh stated individuals with a smoking addiction will buy cigarettes with or without the increased allowance.

Senator McGee quoted the movie "African Queen" by saying, "Human nature is what we were put on this earth to overcome."

Robert Vande Merwe, representing the **Idaho Health Care Association**, said he favors increasing the Personal Needs Allowance, but he is concerned about where the money will come from. Health and Welfare allows $67/month of a patient's Social Security to cover personal needs while the rest of the money is used to operate the assisted living facility in which they live. With an increase in the Personal Needs Allowance, $20 less per individual goes to the facility each month. This would amount to an $800,000 cut in reimbursement this year. He recommended the rule be held until an agreement has been reached with Health and Welfare to find a source for the $20 increase without hurting facilities.

Senator Compton voiced concern that the poorest of the poor would have the most difficulty if the rule was held until the issue was resolved. He asked for a recommendation of where the money should come from.

Robert Vande Merwe stated the rate for assisted living facilities should be raised to cover it.

Senator McGee asked what happens when a rule is held.

Senator Darrington explained what happens to a temporary rule at the end of the legislative session.

Senator Compton added it can be held until a time certain.

Senator Darrington pointed out that private pay will have to compensate for the $20 increase, which may present further problems.

Robert Vande Merwe stated Medicaid-only homes are the ones most at risk and most likely to benefit from the rule.

Scott Burpee, CEO at Valley View Assisted Care Corporation, testified in opposition. The money is coming from the providers and will cost his facility $24,000 next year. In essence, the providers will carry the responsibility of paying for Medicare Part D. The first meeting to discuss alternatives was this morning. He asked to hold the rules until negotiation is finished.

Senator Broadsword asked when the meeting with the Department would be.

Scott Burpee said it was at David Rogers' discretion. The impact to the industry this year is projected to be $820,000, should the rule be approved.

Senator Compton asked the Department whether the copay can be elminated.

Peggy Cook said the copay cannot be eliminated.

Senator Werk asked whether the department had a response to the concerns expressed.

Peggy Cook said discussions have been held. She did not know if a resolution will be reached.

MOTION: **Senator Compton** moved that Docket 16-0305-0601 be held at the call of the Chair pending further information. **Senator McGee** seconded the motion.

Senator Werk asked the Department whether holding the docket would provide the proper motivation to resolve the issue. He requests the Department's word that they would meet often.

Peggy Cook gave the Department's word and conveyed interest in fixing the problems before the rule sunsets at the end of the legislative session.

Senator Broadsword encouraged the Department to work quickly.

The motion to hold the rule was approved unanimously through a **voice vote**.

RULE # 16-0305-0502: **Peggy Cook, Program Manager in the Division of Welfare,** presented **Docket 16-0305-0502, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled - Revocable Trusts (AABD)** (Pending). The docket has been modified since its publication as a result of negotiations. It includes changes to life estates, annuities and asset transfers, and the treatment of trusts.

There are seven changes in the current docket. Two are content changes and five are updates on legal authority and to numbering or reference citations. The content changes are made to sections 801 and 742.

The changes to 801 clarify existing policy. The policy is that a person who is not eligible for Medicaid solely because he/she does not meet immigration status requirements may receive Medicaid coverage only in a medical emergency.

The change to 742 (the Community Spouse Resource Allowance) is the primary change. This rule allows a couple who must live apart because one is in a nursing home to divide their assets equally according to a federally-established allowance. If the federal allowance increases before the husband applies for nursing home assistance, the amount that is protected for his wife will be increased to that new amount.

MOTION: **Senator Werk** moved to adopt Docket 16-0305-0502. **Senator Keough** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 16-0305-0503: **Peggy Cook, Program Manager in the Division of Welfare,** presented **Docket 16-0305-0503, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled - Alignment with Social Security Act (AABD)** (Pending). The changes in this docket simplify access to service for elderly and disabled individuals. There are two sets of government-required changes and one department change. The first government-required change authorizes the Department to implement the Medicare Prescription Drug Program. The second is to align with changes to Supplemental Security Income (SSI) policy because Idaho uses SSI policy to determine eligibility for Medicaid. The department change will allow a disabled person with a service animal to get an allowance to feed the animal: $17 per month.

Senator Broadsword asked about section 338, which states, "the first $30 of earned income and the first $60 of unearned income per calendar quarter are excluded." To what does that refer?

Peggy Cook answered that it refers to infrequent and irregular income such as a gift or temporary job.

MOTION: **Senator Keough** moved to accept Docket 16-0305-0503. **Senator Werk** seconded the motion. The rule was approved unanimously through a **voice vote**.

ADJOURN: Being no further business, the meeting was adjourned at 4:02 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Legislative Presentation 2006

MR/MS Chairman and members of the committee

My name is Linda Palmer. I am a Program Specialist with the Division of Welfare and I am here today to talk about:

Docket 16-0301-0501

Changes to the Rules governing Medicaid for Families and Children

This docket is Located behind the purple tab # 7 Pause just a minute and give time to find it

Introduction

This docket contains two sections of rule changes.

- **The rule change in the first section is not a change in policy and adds no additional new benefits. These changes makes our rules consistent with the Medicaid State Plan and brings our rules into compliance with federal regulations.**

- **This change adds language to rule that is necessary to guide program eligibility determinations and allows staff easy access to information needed to make timely and accurate determinations.**

Each section affected by these changes is detailed in the docket for your review.

(Attachment #1)

Second

- **Second section changes rules 506 and 507 of Children*s Health Insurance Program (CHIP B) and the Children*s Access Card Program. The proposed change would eliminate the current asset test for children applying for (CHIP B) or Children*s Access Card. Removing the asset test will create a greater opportunity for low income families to provide health coverage for their children and participate in the cost of their care.**

- **This change removes the minimum income limit for CHIP B and Children* Access Card and allows Idaho families access to health coverage that would currently be denied because of excess resources.**

- **The rule changes to Children*s Health Insurance and Children*s Access card does not include a request for any additional General Funds. It will be funded from Federal matching dollars, the Idaho Premium Tax Fund and co-payments made by the family. No additional FTP*s are requested. Staff can use the time they now use to review and calculate the value of the family*s assets to manage the increase in CHIP B and Access Card enrollment.**

These changes in the Children*s Health Insurance Program rules fall in line with the Medicaid Reform objectives; to simplify the eligibility process with no additional cost from General Funds while allowing health coverage for more uninsured Idaho children.

Children who receive proper medical care grow up to be healthy, productive adults. Providing Idaho children access to health

coverage will prevent more expensive care in the future that is

often paid for with tax dollars.

I ask for a do pass recommendation

Thank you,

I stand for questions

Section .100 – Provides in rule guidance about the clients right to file an appeal and request a continuation of benefits until a decision is made if the request is made with in 10 days of the mailing of a notice of decision
Section .331 – Medicaid can not be denied because of a transfer in assets. Asset transfer rules only apply to Nursing Home care or Home and community Based Services
Section .352 ..353 Guidance in rule that allows staff to accurately calculate countable self employment income
Section .386 rule that excludes Tribal TANF (Temporary Assistance for Needy Families) income for Medicaid just like Idaho TAFI (Temporary Assistance for Families in Idaho) is missing

Section .507 changes the income limits for CHIP B and Children s Access Card from a range to the families countable income must be less than or equal to 185 % instead of must exceed 150% FPG and less than 185%.

Section .506 removes the asset test for CHIP B and Children s Access Card.

- $9,315 is the median assets declared by families with children denied CHIP B or Children s Access Card
- A family of 4 could qualify for Children s Health Coverage with a monthly income of nearly $3,000.
- We expect an additional 1,800 children over the next 3 years with income up to 185% FPL who have assets over $5,000

Mr/Ms Chairman and members of the committee,

My name is Linda Palmer and I am a Program Specialist with the Division of Welfare. I am here today to talk about:

Docket 16-0305-0501

Changes to the Rules Governing Aid to the Aged, Blind, and Disabled

This docket is located behind the Blue Tab, # 9

Pause just a minute and give time to find it

- This rule was published as a temporary rule, effective April 1, 2005 and brings Idaho into compliance with Social Security Supplemental Income (SSI) regulations.

- This rule implements a work incentive authorized by the Social Security Administration and applies only to individuals already receiving Medicaid and Aid to the Aged, Blind and Disabled (AABD).

- It allows people in Idaho with disabilities to go to work or continue working and continue receiving their current Medicaid coverage but not the cash grant. This work incentive encourages working

Attachment #2

adults with disabilities to move closer to self sufficiency and independence by allowing them remain employed.

- This rule was recommended by the 'Governors 2020 Blue Ribbon Task Force* Disabilities Project.

- This rule is consistent with legislative intent of (Senate Bill 1445 Sec 8); it is budget neutral and does not request any additional General Fund dollars. 100% of the development costs associated with this rule change was funded with federal funds provided by the Medicaid Infrastructure Grant.

SOCO

Work incentives provide more opportunities for people in Idaho with disabilities to get jobs or keep their jobs without losing existing medical coverage.

Employed people become more independent and self sufficient in the long term, and may rely less on government services.

I request that you adopt these temporary rules as final. Thank you,

I stand for questions.

Docket 16-0305-0601 Change to Basic allowance

M.... Chairman, members of the committee

My name is Peggy Cook; I am a Program Manager in the Division of Welfare of the Department of Health and Welfare

I am here today to talk to you about Docket 16-0305-0601 of the Rules Governing Eligibility for the Aged, Blind and Disabled which is behind tab 9 in your notebooks

The department is asking for this rule change because of the impact of Medicare Prescription drug program on some of our clients

This rule allows clients in certain living arrangements to keep $87.00 of their income each month for basic needs. The current allowance is $67. All other income goes to pay for the cost of shelter and food. The additional $20 will help meet the cost of prescription drugs.

Beginning this month a person who receives both Medicaid and Medicare will have a cost for prescriptions. This is new. While the cost for each prescription will be between I and 3 dollars... on average.., people impacted by this rule have 6 to-7 prescriptions per month.

With only $67.00 to purchase personal products such as soap, shampoo and over the counter medications, as well as clothing and other essentials, the added cost for prescriptions could result in some very difficult choices. This change will help these Idahoans get the medicines they need.

I stand for questions

Bp People in these living arrangement approximately 3,400 in December... not all get both Medicaid and Medicare

Attachment #3

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 18, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner

ABSENT/ EXCUSED: Senators Werk and Kelly

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:03 p.m. **Vice Chairman Broadsword** took the Chair. The agenda order was changed as follows to allow for schedule conflicts with the House Health and Welfare Committee.

RULE # 16-0316-0501: **Patti Campbell, Senior Project Manager in the Division of Medicaid of the Department of Health and Welfare,** presented **Rule 16-0316-0501, Access to Health Insurance Program** (Pending). Her testimony is included as an attachment (Attachment #1).

Senator Compton asked about the income requirement.

Patti Campbell stated the income limit is based on family size and is 185% of the federal poverty limit. For a family of three, the gross income limit would be $2,480 per month.

Senator Broadsword asked if there had been any public comment.

Patti Campbell answered that the changes implemented were based on comments from the High-Risk Reinsurance Pool Board and the Advisory Board, not from public meetings.

Senator Compton asked whether the asset test had changed.

Patti Campbell said that this program did not include an asset test.

Senator Compton said there has been on-going review of these changes as a result of the Health Care Task Force.

MOTION: **Senator Brandt** moved to accept Docket 16-0316-0501. **Senator McGee** seconded the motion.

Senator Compton asked why 1,000 individuals were approved but only 277 are participating.

Patti Campbell replied 188 of the 277 are adults. The state-mandated cap of 1,000 is for adults only. Numbers are low because an employer is required to pay 50% of the employee and his/her spouse's premium which is more restrictive than most insurance companies require. A change to this will be recommended soon.

Senator Compton asked if the requirement is changed in this rule.

Patti Campbell stated that the requirement is still in state Law.

Senator Broadsword asked for clarification on whether employers on private insurance policies are only required to pay 25% of the employee's premium.

Patti Campbell stated it depends on the insurance company.

The motion was approved unanimously through a **voice vote**.

RULE # 16-0304-0501:

Terri Meyer, Bureau Chief in the Division of Welfare of the Department of Health and Welfare, presented **Docket 16-0304-0501, Rules Governing the Food Stamp Program in Idaho** (Pending). Her testimony is included as an attachment (Attachment #2).

Senator Broadsword asked for an explanation of Tribal General Assistance, as mentioned on page 97 of the rule.

Terri Meyer said each of the tribes in Idaho has a cash-assistance program and page 97 in the rules includes a definition of the cash assistance that is delivered to tribal members.

Senator Broadsword whether the cash assistance is used to determine eligibility.

Terri Meyer yielded to **Chris Warner of the Department of Health and Welfare**, who explained it is excluded.

Senator Compton asked if Tribes participate in the federal food stamp program.

Chris Warner affirmed.

Senator Compton asked about the savings accounts set up to aid in buying a home, as described in the rule.

Terri Meyer explained that the Family Self-Sufficiency Program through Housing and Urban Development (HUD) subsidizes any increases in rent throughout the duration of a program members' tenancy and sets the money aside in a savings account to be used in purchasing a home or small business. It is a cost-sharing arrangement.

Senator Broadsword asked about the residency requirements on page 107 of the rule. How long must an individual live in the state before they can apply for food stamps?

Chris Warner stated the requirement is only that an individual lives in Idaho and intends to stay.

Senator Compton pointed out that it is a federal program so residency is not as integral.

Senator Broadsword asked if there are safeguards against individuals who try to get food stamps in two different states.

Terri Meyer explained there are electronic interfaces with other states to cross-check for these issues.

MOTION: **Senator Compton** moved to accept Docket 16-0304-0501. **Senator McGee** seconded the motion. The motion was approved unanimously by a **voice vote**.

RULE # 16-0612-0501: **Terri Meyer, Bureau Chief in the Division of Welfare,** substituted for **Genie Sue Wepner** in presenting **Docket 16-0612-0501, Rules Governing the Idaho Child Care Program** (Pending). Her testimony is included as an attachment (Attachment #3).

Senator McGee expressed his support for the rule. It spends only federal dollars and it encourages people to find employment.

Senator Broadsword asked whether child care needed for employment on page 342 would cease after three months as well.

Terri Meyer said no. It does not affect any other child care benefit currently in place. It only limits the amount of child care available while people search for work.

Senator Keough asked whether there was currently a limit.

Terri Meyer stated there is not.

MOTION: **Senator Coiner moved to accept** Docket 16-0612-0501. **Senator Keough** seconded the motion. The motion was approved unanimously by a **voice vote**.

RULE # 16-0601-0501: **Chuck Halligan, Program Manager for Children and Family Services with the Department of Health and Welfare,** presented **Docket 16-0601-0501, Rules Governing Family and Children's Services** (Pending)**.** His testimony is included as an attachment (Attachment #4).

Senator Broadsword asked what the assistance amount is per child, and whether it is adequate to cover their needs.

Chuck Halligan answered it averages $300 per month. The amount cannot exceed the foster care payment for a child of the same age. The Department negotiates with adoptive parents and agree upon the amount required to meet the child's needs.

Senator Broadsword asked if anyone involved has found any problems with the rule changes.

Chuck Halligan said it would actually be an easier process.

Senator Compton asked at what age the assistance ceased.

Chuck Halligan stated until age 18.

Senator Compton asked whether the Medicaid assistance would be predicated on the family's income.

Chuck Halligan said the Medicaid is based on the child's eligibility while they are a foster child. Prior to the adoption finalization, the child is on Medicaid, and it would continue with them until age 18.

Senator Broadsword asked if Medicaid assistance continued even if the adoptive parents could afford payments.

Chuck Halligan said yes. The agreement is based on the child's needs, not the family's income or resources.

Senator Broadsword asked whether the Department follows up to make certain the child remains in the adoptive home.

Chuck Halligan said no. It is their responsibility to notify the Department if the child is no longer in their home. Usually, the Department would know because the child has come back into foster care.

MOTION: **Senator Coiner** moved to accept Docket 16-0601-0501. **Senator McGee** seconded the motion. The motion was approved unanimously by a **voice vote**.

RULE # 16-0602-0501: **Chuck Halligan, Program Manager for Children and Family Services,** presented **Docket 16-0602-0501, Rules Governing Standards for Child Care Licensing** (Pending). His testimony is included as an attachment (Attachment #4).

Senator Broadsword asked about the fiscal impact. If visits are being cut in half, money is being freed up.

Chuck Halligan explained the time and resources saved by limiting visits will be used to implement a 27-hour training program for foster parents. The staffs' time will be shifted to conduct this training.

MOTION: Senator McGee **moved to accept Docket 16-0602-0501. Senator Keough** seconded the motion. The motion was approved unanimously with a **voice vote**.

RULE # 16-0608-0501: **Pharis Stanger, Program Manager of Substance Abuse, Division of Community and Family Services, Department of Health and Welfare,** presented **Docket 16-0608-0501, Rules and Minimum Standards for DUI Evaluators** (Pending). His testimony is included as an attachment (Attachment #5).

Senator Broadsword asked how many licensed counselors Idaho has.

Pharis Stanger stated there were about 300-400.

Senator Broadsword asked whether the results of the new rules would diminish that number.

Pharis Stanger answered he did not think so.

Senator Brandt asked if there had been any negative responses to the rule.

Pharis Stanger said there was concern about Grandfathering, but no negative responses.

MOTION: **Senator Compton** moved to accept **Rule 16-0608-0501. Senator Brandt** seconded the motion. The motion was approved unanimously with a **voice vote**.

Senator Brandt asked if "child care" included day care, as a matter of terminology.

Bill Walker, Deputy Director, Department of Health and Welfare, said the two terms are interchangeable.

ADJOURN: Being no further business, the meeting was adjourned at 3:53 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Access to Health Insurance – Docket 16-0316-0501

This docket pertains to the newly implemented program, Access to Health Insurance which helps uninsured Idahoans afford private health insurance.

Access to Health Insurance provides premium assistance to qualifying employees and their families by offsetting their insurance premiums up to $100/per person/month. The premium assistance, which is paid directly to the insurance company, provides a maximum benefit of $500 to the family.

For employees to qualify for Access to Health Insurance, they must:

- Not have health insurance at the time of application
- Work for a participating employer
- Live in Idaho & meet citizenship requirements; and
- Meet income guidelines, which are based on family size and adult income of the family. As an example, a family of 3 must have income less than $2480 gross income/month

For employers to participate in this program, they must:

- Operate an Idaho small business with 2-50 employees, and have at least one employee who meets the eligibility criteria
- Currently not offer health insurance to employees
- Be willing to pay at least 50% of the insurance costs for employee, and if the spouse enrolls, 50% of the combined premium for the employee & spouse

Access to Health Insurance, which was implemented in July 2005, has an enrollment cap of 1000 adults. Currently we have 277 individuals receiving coverage through private insurance who were previously unable to afford it, 188 of these individuals are adults. Additionally, there are 58 small business employers participating in the program who have not been able to offer insurance in the past.

The average cost the Department pays for the adult premium is $75/month, and for children it is $54 month. Funding for this program is 80% federal funds and 20% is drawn from the Idaho Premium Tax fund. There is no general fund impact to the program.

These rules have an effective date of July 1, 2005 and were initially published in May 2005 with public meetings held in Idaho Falls, CDA, & Boise. The rules were also reviewed and approved by the Advisory Board and the High Risk Reinsurance Pool Board. Comments were incorporated and republished to provide clarity to some language, and republished in January 2006.

Additional changes are planned for this program over the next several months, which are part of the Medicaid Reform initiative. One of these changes will include removal of the requirement to be uninsured at the time of application, which is a restriction in federal law. We are currently working with our federal partners for approval to increase our flexibility to allow individuals to keep their private insurance, and we anticipate this change will be implemented by July. **(Attachment #1)**

Food Stamps

Introduce Self

Docket # 16-0304-0501

"Rules Governing the Food Stamp Program in Idaho"
Tab #8

Idaho s Food Stamp Program is a **nutrition program** serving an average of **93,000** individuals, or **38,000 families** per month. The majority of those individuals are the working poor with children and the elderly.

Our Food Stamp Program has struggled over the past few years with a high error rate. We are proud to say we are showing steady improvement since 2003 when it was **11.03%,** to 2004 when it was *9.05%* and for 2005 we are currently at *7.8%.* Our goal is to be below 6%.

Last year you passed rules that played a part in helping us improve our performance. The rule changes before you now will also play a part in helping us continue to **improve our performance and comply with federal law.** These changes will also help benefit those eligible for food stamps by providing administrative consistency and uninterrupted benefits.

There are roughly *58* changes embodied in the proposed rule changes. I will explain the two most meaningful/impactful changes and answer questions about any of the others.

1) Extends the Food Stamp certification period for families with no income from 3 **months to 6 months.** This is a federally required

(Attachment #2)

change and will impact approx 10% of our caseload. This means individuals who have **recently lost their** jobs, and are not yet eligible for unemployment, or people who have **become disabled** and are not yet eligible for Social Security Disability will have a stable food budget for 6 months while they regain economic independence.

2) Exclusion **of Housing and** Urban Development sponsored savings accounts when determining eligibility for Food Stamps. This is also a federally required changed. Families participating in HUD**'**s Family **Self Sufficiency Initiative** have **HUD** sponsored savings accounts that are **accessible only by HUD and** funds in the account are **to** be used only **for a down payment on a home, or to start a small** business. This change means as federally required - we will not consider those accounts as available resources when determining eligibility for Food Stamps.

3) The third area is the 'housekeeping**'** area and these changes were made to clarify definitions, remove business processes from rule, remove antiquated language, update references to the Code of Federal Regulations and reduce inconsistencies.

I ask for your "do pass" recommendation and stand for questions.

Idaho Child Care Program

Introduce Self

Docket # 16-0612-0501
"Rules Governing the Idaho Child Care Program" (ICCP) Tab #10

The primary goal of the Idaho Child Care Program (ICCP) is to help low income families with children achieve self sufficiency through employment.

Last year child care subsidies assisted approximately 6,500 **Idaho families** with nearly **10,000 children** in affording child care while they worked, attended school, or looked for work.

This rule change proposes a limit to the length of time a family is eligible to have ICCP offset their child care costs while looking for work.

Under the current rules, unemployed parents are able to receive child care assistance indefinitely, if they document they are looking for work.

This rule change proposes a *3* **month limit** during a calendar year, **with up to 80 hours** of job search activity allowed for each month.

This rule change would limit **ONLY the indefinite work search activities** and would not affect already employed families or families in educational or training programs.

(Attachment #3)

This change directly supports the program s **primary goal** of helping families with children obtain employment and self-sufficiency,

- by creating a sense **of urgency** to obtain employment.

- It also **re-directs the estimated $368,000** being spent in this manner — toward federally required Maintenance of Effort and back into the program to help satisfy the costs associated with caseload growth.

- Third, it reduces the **administrative burden** on the program, our clients, and providers.
  - Caseworkers will not be required to track these cases indefinitely
  - **Clients** won t have to report proof of work search every month
  - **Providers** will not be at risk of non-payment when work search is not documented by the individual.

- Before I conclude I would like to touch again briefly, on the fiscal impacts of this proposed rule. Approval of this rule change represents an estimated $368,000 being redirected to finance federally required Maintenance of Effort for caseload growth and means no additional state funds would be necessary to balance the '07 ICCP budget.

That concludes my presentation, I ask for your "do pass" recommendation and stand for questions.

Good morning Mr. Chairman and members of the committee. My name is Chuck Halligan. I am a Program Manager for Children and Family Services with the Dept of H&W. I am here today to present on two sections of rules. The first docket is under **Tab 16** and concerns rules Governing Family and Children**'**s Services. This is **docket number 16-0601-0501,** a pending rule. I would ask that the committee consider adopting these pending rules.

This rule docket concerns adoption assistance. Adoption assistance is a program designed to encourage adoption of children with special needs. Children with special needs are children who have a medical, physical, mental, or emotional disability; or they are members of a sibling group; or because of their age it is difficult to find an adoptive home. During the 1970s many of these children languished in foster care because adoptive parents were unable to take on the financial burden of the child**'**s special needs. These foster children became adults without the benefit of having a permanent family. The federal government through public law 96-272, the Adoption Assistance and Child Welfare Act of 1980, encouraged adoption by allowing states to offer the same benefits of foster care to adoptive parents. Adoption assistance allows financial payments and Medicaid for a child to assist the adoptive parents in meeting the child**'**s special needs. Of course Medicaid would cover the child**'**s medical needs and financial assistance is used for non-medical needs.

A contract is the basis for the adoption assistance agreement. It is negotiated between the adoptive parents and the state prior to the finalization of the adoption. Any change to the agreement must be agreed upon by both parties. The department can only terminate the

(Attachment #4)

agreement under three conditions. These conditions are outlined in both federal and state statutes. The three conditions ‘for terminating the adoption assistance agreement are when the adoptive parents are no longer responsible for the child, the child is no longer financially supported by the adoptive parents or the child turns 18.

On page 164 Section 911 paragraph 02 deletes the reference to suspending or terminating adoption assistance if the family fails to complete the annual verification. The paragraph will make it clear that termination of the adoption assistance can only occur under the three previously mentioned conditions. The first three sections of the rules on page *163* are simply updates and corrections.

I would again ask that the committee consider adopting these pending rules. This concludes my remarks. I will now stand for questions.

The second docket concerns Rules Governing Standards for Child Care Licensing and is under **Tab** 17. This is **docket number 16-0602-0501,** a pending rule. I would ask that the board consider adopting these pending rules.

This rule concerns the licensing of foster homes, residential treatment facilities, and therapeutic outdoor programs. Idaho code states that the department shall visit each as often as necessary hut in any event not to exceed 12 months. Our current rules state we

will visit every six months. This is unnecessary and time consuming for both department staff and the provider being licensed. These visits are a complete review of conformity to the standards, in essence the same as an annual licensing study.

The safety and well being of children will not be compromised going to an annual visit. Our staff visit foster children in their foster homes at least every 60 days. Their presence during this time is to assess the continuing safety and adequacy of the foster home environment and the child**'**s safety and well being. We can also go to residential facilities anytime during the year if a concern is raised about child safety or the adequacy of the program to meet licensing standards. When licensing issues are identified we work with the provider on a corrective action plan that specifies what action will be taken to correct the deficiencies. This includes specific timelines for the actions and outlines our follow up to insure compliance.

On page 370 Section 104 changes the mandatory visitation to intervals not to exceed 12 months changing it from every six months. The other sections of the rules are simply updates and corrections.

I would again ask that the committee consider adopting these pending rules. This concludes my remarks. I will now stand for questions.

Thank you Mr. Chairman and members of the committee.

Docket 16-0608-0501

- Mr. Chairman and members of the committee.
- Pharis Stanger, Substance Abuse Program Manager, Division of Family and Community Services, Department of Health and Welfare, 334-4944.

- Docket 16-0608-0501, Rules and Minimum Standards for DUI Evaluators.
- Tab 18.
- Idaho Code sets that the Court may order an evaluation on a person convicted of a DUI charge to assist in the sentencing process for greater public safety.
- The evaluation is to be done by an evaluator approved by the Department of Health and Welfare.
- Currently there are 131 licensed evaluators.
- Conduct approximately 5,000 evaluations per year.
- The Department began the process in 2000 to improve DUI evaluations based on input from the Supreme Court representing courts from throughout the State.
- With these rules changes we are continuing that process as well as increasing efficiencies in the licensing process based on input from DUI licensees.
- To solicit comments on the rules we provided notice of the rule changes to
  DUI Evaluator Advisory Committee
  - All licensed DUI Evaluators
  - Supreme Court to distribute to all judges
  - Regional Substance Abuse Authorities
  - DHW Regional Directors

- Changes to the Definitions Section:
  - Added distance education to continuing education
  - As a result of comments, added defendant to include those intending to plead guilty.

(Attachment #5)

- Changes to the Licensure Section:
  - It is appears there are a lot of changes, but they are mostly from moving a section to clarify and simplify the licensure process and renumbering.
  - Moved the qualifications section to follow licensure to assist persons in determining if they are qualified before proceeding through the licensure process and taking the required exam.
  - In the qualification section removed bachelor degree in allied health field.
  - As a result of comments
    - Added advanced certified alcohol drug counselor
    - Licensed marriage and family therapist
    - Registered marriage and family therapist intern
  - Added requirement of 20 hours of continuing education within 12 months prior to applying for license.
  - Grandfather in those that had previously been qualified on a bachelor s degree.
  - Clarified the license renewal process

- Strengthened the statistical reporting requirement to collect data on persons being evaluated.

- In closing, these rule changes are designed to improve the quality of evaluations to assist the courts in the sentencing process for greater public safety.

- Request that adopt these pending rules as final.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 19, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s) will be retained in the committee's office until the end of the 2006 legislative session, and then will be maintained in the Legislative Library (Basement E)

CONVENED: **Chairman Compton** called the meeting to order at 3:10 p.m. **Vice Chairman Broadsword** took the Chair.

RULE #: 19-0101-0501 **Mike Sheeley, Executive Director, Idaho State Board of Dentistry,** presented **Docket 19-0101-0501, Rules of the Idaho State Board of Dentistry** (Pending). His testimony is included as an attachment (Attachment #1).

Senator Darrington asked whether this rule was the only one that made a reference to sedation.

Jerry Davis, **Executive Director, Idaho Dental Association,** said no, and the Association approves unanimously to the proposed changes.

Senator Brandt asked where the contention lies in the rule.

Jerry Davis reserved the question for the next rule on the agenda, which would produce testimony on both sides of the issue.

MOTION: **Senator Werk** moved to approve Rule 19-0101-0501. **Senator McGee** seconded the motion. It was approved unanimously through a **voice vote**.

RULE #: 19-0101-0502 **Mike Sheeley, Executive Director, Idaho State Board of Dentistry,** presented **Docket 19-0101-0502, Rules of the Idaho State Board of Dentistry** (Pending). His testimony is included, in part, as an attachment (Attachment #2).

Mike Sheeley stated that members of the Idaho State Dental Association requested the Board to make this change. Eighteen hours of didactic education and 20 hours of supervised patient observation would be required to get the new permit. The existing permit requires 60 hours of didactic education. The educational standards proposed are entirely consistent with the American Dental Association (ADA).

Three members of the Board attended a three-day Oral Conscious Sedation Course to determine its adequacy. All returned to report the course was adequate in terms of safety.

Senator Broadsword asked whether a dentist receives this training in his/her dentist schooling.

Mike Sheeley said they do, but this is an additional post-graduate requirement in order to get a permit.

Senator Broadsword asked if the permit is required currently.

Mike Sheeley said it is. The change is in the training program and its duration.

Senator Darrington asked whether basic disagreement had to do with dividing the permit into two permits.

Mike Sheeley said it is. Many dentists and anesthesiologists are satisfied with the current permit scheme. The reduction in educational hours is a concern to them, but the Board members who attended the course approved of it. The reduced training would apply to the sedation of adults only.

Mike Sheeley said many other states already use this permit process, including Oregon and Utah. Fourteen states require no permit at all. While safety is always a concern, no death has ever been recorded from permit-holding dentists using conscious sedation.

Joseph D. Ballenger, Jr., DDS, oral surgeon with a history of service on the Board of Dentistry, **evaluator of anesthesia for Idaho**, testified in opposition to the rule change. His testimony is included, in part, on page five of attachment three (Attachment #3, Page #5).

Dr. Joseph Ballenger pointed out that the Board members who attended the course to determine its adequacy were not permit-holders and had no personal experience in sedation. He stated that, to his knowledge, there is no definition separating “limited” from “comprehensive” sedation in any medical organization or association. The ADA created a resolution, not a national standard, on the difference.

Senator Compton asked whether Oregon and Utah have found success with their program.

Dr. Joseph Ballenger stated the changes are too recent to know. He went on to express concern for a possible influx of dentists wishing to get a permit. Evaluators for such permits are spread thin as it is, and making the permit process more accessible might result in faulty evaluations due to difficult workloads.

Senator Werk asked if Dr. Ballenger meant to imply that the Board of Dentistry does not have qualified people to provide adequate evaluations.

Dr. Joseph Ballenger said no, but that the evaluators have historically

had a hard time keeping up with the evaluations.

Senator Werk asked if Dr. Ballenger thought a large number of practitioners would want a permit if it were more accessible.

Dr. Joseph Ballenger said he thought so.

Senator Werk asked how many practitioners currently hold permits for conscious sedation.

Dr. Joseph Ballenger estimated that 25 oral surgeons have general anesthesia permits.

Senator Broadsword asked Mr. Sheeley if he agreed with the estimate.

Mike Sheeley estimated there are 78 permit holders in the state, roughly split between conscious sedation and general anesthesia.

Senator Werk asked whether a limited permit would add substantial competition.

Dr. Joseph Ballenger said no. The general dentists who would apply for the permit use it for much different procedures than what general anesthesiologists would be using it for.

Senator Broadsword stated that often, a person's first experience with anesthetics is when wisdom teeth are removed. She asked if there is any way to predict an individual's reaction.

Dr. Joseph Ballenger stated there is not.

Senator Darrington asked if Dr. Ballenger does not accept the statistic that no deaths have been recorded from conscious sedation, or if he feels like this is a turf battle.

Dr. Joseph Ballenger answered that he does not personally know about the statistics. He said his main concern is safety.

Dr. Lyn R. Blazedale, general dentist, Comprehensive Anesthesia Permit holder, Board of Dentistry evaluator, testified in opposition to the rule.

Dr. Lyn Blazedale expressed concern about who would train and evaluate the offices applying for the permit. The IV sedation permit holders adamantly refuse to get involved at that level of care. He said the Board allows the required 20 hours of supervised patient observation to be done by videotape. He also said giving a pill to a patient frightens him more than using an IV for sedation. A better solution would be for the Board of Dentistry and the Idaho State Dental Association to sponsor a course of 60 hours plus hands-on training so the doctors would not have to go out of state, and a higher standard of care will be observed.

Dr. Eric Nelson, dentist and medical doctor, General Anesthesia and Conscious Sedation permit holder, testified that an IV is the safest way

to administer sedation. He expressed concern that the state would be relaxing standards set by the American Board of Anesthesiologists. He opposed the rule.

Senator Broadsword invited Mr. Sheeley to close.

Mike Sheeley stated that pills are not a dangerous way to administer sedation and dentists frequently use them to get anxious patients to undergo dental treatment. He does not know how many applicants will apply for the permit, should it change, but he assured the committee that safety is the top priority.

Senator Broadsword asked if he felt the standard would be lowered.

Mike Sheeley answered the trend is moving toward the permit. Several states already have similar processes in place.

Senator Broadsword asked whether those states are as conservative as Idaho.

Mike Sheeley listed the states for the committee. He said this is the future of dentistry.

Senator Kelly asked about the evaluation process and whether the $300 fee associated with renewing the permit was enough to fund the necessary oversight.

Mike Sheeley said the Board can cover the costs on its own without raising the fee.

Senator Kelly asked, “What exactly is that oversight, that costs $283 every five years?”

Mike Sheeley explained two permit holders visit a dental office to observe the renewing permit holder, the staff, and his/her equipment in daily procedures and hypothetical emergency situations.

Senator Kelly asked if, with the new permit, evaluators would be permit-holders of the same category as the one under evaluation.

Mike Sheeley said yes, and after the initial evaluation, it would continue on a five-year renewal basis.

Senator Darrington asked if the limited sedation permit allowed the holder to use only oral sedation and if the comprehensive permit allowed for both oral and intravenous sedation.

Mike Sheeley said yes, and that the limited permit cannot be used to sedate children.

Senator Darrington commented on the difficulty of the decision before the committee. There are public safety, turf battle, and industry methodology advancement issues to consider.

Senator Werk asked whether dentists have the authority to write prescriptions.

Mike Sheeley said they have limited prescription-writing privileges.

Senator Coiner stated that he sensed no turf war. He said he trusts the conclusion made by the three Board members that the course was adequate. But, it is a work in progress and more needs to be worked out.

MOTION: **Senator Coiner** moved to reject Docket 19-0101-0502. **Senator Keough** seconded the motion.

Senator Compton stated there is no pending event which would cost the state money or frustrate the profession so a delay would be in order.

Senator Brandt asked Mr. Davis about the Board of Dentistry.

Jerry Davis, explained the differences between the Board of Dentistry and the Idaho State Dental Association. He reiterated that safety is the main concern in this rule; it is not a turf war.

Senator McGee asked if there was room for negotiation.

Dr. Joseph Ballenger said there is.

Senator Broadsword asked Mr. Sheeley whether there had been any negotiation in making the rule.

Mike Sheeley said it underwent the rule promulgation process. Many comments were received and considered. The Idaho State Dental Association represents 80% of Idaho's dentists.

Senator Darrington said he would support the rule if it had a three-year sunset clause. This would allow time to evaluate its success.

The motion to reject the rule passed unanimously by a **voice vote**.

RULE #: 19-0101-0503

Mike Sheeley, Executive Director, Idaho State Board of Dentistry, presented **Docket 19-0101-0502, Rules of the Idaho State Board of Dentistry** (Pending). His testimony is included as an attachment (Attachment #4).

Senator Broadsword announced that testimony would be limited to three minutes, given the time.

Senator Compton asked if the annual renewal requirement is set in statute.

Mike Sheeley said it is in many statutes.

Senator Broadsword asked if rules can be approved before a statute is changed.

Mike Sheeley said he did not know, but the Board is anxious for the rule to take effect as soon as possible.

Senator Darrington explained the statute must come before the rule. He called for Dennis Stevenson to clarify procedure.

Dennis Stevenson, Administrative Rules Coordinator, said rulemaking is not advised until after legislation has been enacted because there is always a possibility that the legislation will fail. Statutory changes should always precede rulemaking.

Senator Compton asked Mr. Sheeley whether any legislation is currently being written.

Mike Sheeley offered to withdraw the docket and create a temporary rule instead of having the docket approved or rejected.

Senator Kelly said since a fee increase is involved, it could not be a temporary rule.

Dennis Stevenson explained once a pending rule is before a committee, it cannot be withdrawn but must be approved or rejected.

MOTION: **Senator Compton** moved to reject Docket 19-0101-0503. **Senator Coiner** seconded the motion. The motion to reject the rule passed unanimously by a **voice vote**.

RULE #: 16-0309-0503 **Leslie Clement, Deputy Administrator, Division of Medicaid, Department of Health and Welfare** presented **Rule 16-0309-0503, Rules Governing the Medical Assistance Program** (Pending). Her testimony is included as an attachment (Attachment #5).

Senator Compton stated last year's legislation directed that information be gathered and a survey be taken to ascertain reimbursement rates. No change in reimbursement rates is guaranteed through that legislation. The rule simply laid out how this task was to be completed. The process worked as it was supposed to.

Leslie Clement concurred.

Michael Wilson, Program Administrator of Life Incorporated, a privately-owned and operated developmental disabilities agency from Meridian. He represented the **Idaho Residential Supported Living Association (IRSLA)**. His testimony is included, in part, as an attachment (Attachment #6).

Michael Wilson explained possible reasons for the low response rate to the reimbursement survey, including limited response time, lack of advance notification, and the complexity and costliness of the survey. He said the survey tool is inherently flawed. He said section 6 of the rule goes beyond the scope of the statute and requested that it be rejected.

Senator Compton explained the role of the committee in making a decision on the rule. The committee is not responsible for rate-setting.

Michael Wilson asked for a rejection of section 6.

Senator Werk explained that a rejection of section 6 would mean the rule passes as it stands, absent section 6 only. "Does that get you where you want to go?"

Michael Wilson said it does not and asked that the rule be rejected.

Senator Keough asked for Mr. Wilson's definition of methodology.

Michael Wilson said his association has not developed a methodology but asked Olsen & Company CPAs to aid in that determination. He deferred to Glen Olsen.

Glen Olsen, Certified Public Accountant (CPA), summarized the report he provided in writing to the committee (Attachments #7 and #8).

Senator Werk asked, "If the statute says 'the Department shall implement a methodology for reviewing and determining reimbursement rates,' are the elements... [ ]in the rule [considered] a methodology?"

Glen Olsen said he did not know.

Senator Kelly asked Ms. Clements how the Department has implemented the statute's mandate to "implement a methodology for reviewing and determining reimbursement rates."

Leslie Clement said the methodology existed in collecting information on the costs of services. It was a detailed analysis based on collecting direct care costs and overhead costs. The survey and analysis was the methodology.

Senator Kelly asked whether this would be completed annually, as required by the statute.

Leslie Clement said of course.

Senator Broadsword asked about a letter which was sent by the Department to legislators in November.

Leslie Clement had copies on hand and circulated them.

Senator Brandt asked more about the methodology.

Leslie Clement said part of the methodology was set forth in statute. The tool used to obtain information on service costs is in the rule.

Senator Brandt asked whether part of the rule dictated that once the costs were obtained, a percentage is laid out for reimbursement.

Leslie Clement explained how that information was not included and the Department was advised not to set an automatic increase since it must be reviewed annually. An elaborate cost-settlement analysis was never the intention of the sponsors of the legislation because the fiscal impact to the Department was to remain at zero.

Senator Werk commented on the size of the report which had just been circulated. He asked for clarification on the advice to not include an automatic increase.

Leslie Clement explained that if a certain percentage of increase was mandated by the statute, the Department would have to include that in their annual budget request to the Joint Finance-Appropriations Committee.

Senator Broadsword asked whether there was a rate increase and if it would be submitted to JFAC.

Leslie Clement said there was not a rate increase because the Department did not have sufficient information.

Senator Compton asked whether, after the survey had brought in information, there was not compelling evidence to recommend an increase for this particular area to the Governor.

Leslie Clement said the Department felt it was difficult to make those determinations since only 2% of the provider agencies had responded to the survey.

Senator Compton noted that several providers claim to have had no increases in ten years. He asked if that was fact or fiction.

Leslie Clement said, “both.” It depended on the provider agency and the particular service they provide.

Senator Werk asked if providers for adults and children are segregated when looking at the provider base.

Leslie Clement said that although that was not done in this report, it is possible to do.

Senator Werk asked if there was a difference in rates for providers for adults versus providers for children.

Leslie Clement said some services are children-specific and others are adult-specific. If the service is the same, the rate is the same.

Senator Werk asked whether it was valid to lump all the providers into one report.

Leslie Clement said the report reflects the lump total but the analysis broke providers down to the smallest categories.

Senator Broadsword commented on the complaints that the survey was too complicated and difficult. “Is that part of why you didn’t get a response?”

Leslie Clement said it must be an element, but the Department offered ample help throughout the survey process.

Shelley Holmes, Program Director at Tomorrow's Hope, testified in opposition to the rule. Her testimony is included as an attachment (Attachment #9).

Senator Broadsword asked how the acceptance of this rule would change the reimbursement rate this year.

Shelley Holmes said the rule is insufficient because it will not change the rate this year. It only provides information to create a methodology.

Senator Keough asked what is missing from the rule.

Shelley Holmes said the methodology and parameters for determining a reimbursement rate are missing.

Senator Keough referred to the sections of the rule which discuss methodology. She asked whether Ms. Holmes had a specific suggestion for changes.

Shelley Holmes said Mr. Olsen did.

Senator Keough explained the focus of the committee is on the rule. They discussed coming to the table with the Department to find a consensus.

Senator Compton asked whether Ms. Holmes' organization participated in the negotiated rulemaking and made specific recommendations.

Shelley Holmes said they did but most of their comments were not included in the rule.

David Hoffman, operator of a developmental disability agency, testified briefly and his testimony is included in-full as an attachment (Attachment #10). He said what he is looking for is a methodology that will allow him to hire quality, long-term staff and to provide quality services. The Department's methodology fails to provide what providers need to know.

Bill Venchula, owner and operator of a developmental disability agency, testified in opposition to the rule. He said an adequate methodology has yet to be developed. The Department is his competitor because of the disparity in salaries. The missing element in the methodology is how to compensate employees from the private sector competitively. Nowhere in the survey were public wages compared to private wages.

Senator Compton requested the discussion be limited to the rule. He recommended lobbying the Governor or legislators on his separate issue.

Bill Venchula asked that the rule be rejected unless public wages are compared to private wages.

Gregory Dickerson, representing **the Mental Health Provider Association of Idaho**, testified in opposition to the rule and his testimony

is included as an attachment (Attachment #11).

Shaun Bills, **Secretary for the Case Management Association of Idaho,** testified briefly in opposition to the rule. His testimony is included in-full as an attachment (Attachment #12). His association feels the rule fails to carry out the mandates of the statute. He proposed a rejection of the rule.

Senator Compton asked whether Mr. Bills' organization completed the survey.

Shaun Bills said he did and it was very difficult.

MOTION: **Senator Werk** moved to reject Docket 16-0309-0503. **Senator Coiner** seconded the motion.

Senator Darrington stated the methodology was included in the rule, whether or not the providers preferred it.
Senator Compton concurred with **Senator Darrington.**

SUBSTITUTE MOTION: **Senator Compton** made a substitute motion to accept Docket 16-0309-0503. **Senator Kelly** seconded the motion.

Senator McGee stated the committee has a history of sending people away with the direction to meet until a consensus is reached. He asked whether that would be possible this time.

Senator Darrington said there is not time this session to do so. He said the need for adequate compensation is not being questioned – there is a need – so the question is whether the report agree with the statute and he said it does.

Senator McGee said the real issue is annual compensation, and they could return next year if the docket is accepted with an annual review.

Senator Darrington affirmed that the report is annual. The methodology may be inadequate to serve future needs of providers.

Senator Kelly acknowledged the rule replicates much of what is in the statute. Should the docket pass, the annual review should probably be conducted differently.

Senator Brandt noted an issue of the Department trying to do the legislature's job. The numbers provided by the Department should be presented to the legislature to determine whether increases are necessary. The methodology needs to provide accurate information before it matches the intent of the statute.

Senator Compton reminded the committee the vote is on the rule, not on a rate increase.

Senator Werk pointed out that once the rule is approved, the Department has little motivation to work out differences with providers, so he urged the committee to reject the rule. He reminded providers that the statute does

not entitle providers to a yearly increase. He requested a **role-call vote**, as follows: (See Attachment #13)

The substitute motion to accept the rule failed 3 ayes – 6 nays.

AYE: Chairman Compton, Senators Darrington and Kelly
NO: Vice Chairman Broadsword, Senators Brandt, Keough, McGee, Coiner, Werk

The motion to reject the rule passed 7 ayes – 2 nays.

AYE: Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk
NO: Chairman Compton and Senator Kelly

ADJOURN: The final three dockets, **16-0309-0506, 16-0319-0501, and 16-0319-0502** were rescheduled for a later date. The meeting adjourned at 5:20 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 23, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:03 p.m. **Vice Chairman Broadsword** assumed the Chair for rules review.

MINUTES: A motion was made by **Senator Kelly** that the minutes of Thursday, January 12, 2006 be approved as written. The motion was seconded by **Senator McGee** and was **carried by a voice vote**. **Senator Coiner** moved to approve the minutes of Wednesday, January 11, 2006 as written. **Senator McGee** seconded the motion, and it was **carried by a voice vote**.

RULE # 16-0309-0601: **Pat Guidry, Mental Health Policy subject matter expert in the Division of Medicaid, Department of Health and Welfare,** presented **Rule 16-0309-0601, Rules Governing the Medical Assistance Program** (Temporary). Her testimony is included as an attachment (Attachment #1).

Senator Darrington asked if credentialing fit within licensure, registration, and certification.

Pat Guidry said credentialing is sometimes referred to as certification.

Senator Coiner asked why the rule is temporary.

Pat Guidry explained that the temporary status allows the Department to implement the rule immediately. Also, the Department would be able to modify the rule to add specificity as necessary.

Greg Dickerson, representing the Mental Health Provider Association of Idaho, testified in support of the rule, noting the need for a technical correction. His testimony is included as an attachment (Attachment #2). He requested that the committee reject section 465.02.h.ii of the rule.

Senator Broadsword asked whether it would reflect poorly on the Department if a person was issued certification when they were under investigation for fraud if they were convicted thereafter.

Greg Dickerson said it could be resolved on a case-by-case basis. He suggested a change to the rule to allow provisional certification in cases under investigation.

Senator Compton referred to Ms. Guidry's explanation that the significance of a temporary rule is to allow changes to be made throughout the implementation process. He asked if Mr. Dickerson thought his suggestions could be integrated at that time.

Greg Dickerson said the changes he recommends could be done through the rule promulgation process. It was important that these issues be on record, however.

Senator Darrington asked which other section Mr. Dickerson referenced in his testimony.

Greg Dickerson answered it was section 455.02.h.ii.

Senator Werk asked Ms. Guidry whether there was a good reason for the inconsistency between sections 455 and 465.

Pat Guidry said the editing process failed to catch the inconsistency until the rule was in its final form. The Department is in agreement to change the language and add specificity, as a result of conversations with the Provider Association.

Senator Werk asked Mr. Dickerson if the Provider Association perceives the same agreement.

Greg Dickerson said he feels they are still in the initial phase of coming to an agreement on the wording.

Senator Broadsword asked if the Department plans to come back to the table and make changes if the rule was approved.

Pat Guidry said it would.

Senator Kelly asked if approving the rule without the subsection would leave a void.

Pat Guidry said it would.

MOTION: **Senator Coiner** moved to extend Rule 16-0309-0601. **Senator McGee** seconded the motion. The motion was approved unanimously through a **voice vote**. No sections were rejected.

Senator Broadsword urged the Department to converse further with the Provider Association and work through the issue in a timely manner.

RULE # **Cameron Gilliland, Developmental Disabilities Program Manager,**

16-0411-0502: **Family and Community Services**, presented **Rule 16-0411-0502**, **Rules Governing Developmental Disabilities Agencies** (Pending). His testimony is included as an attachment (Attachment #3).

Senator Broadsword asked whether the rule is a new chapter.

Cameron Gilliland said it is a complete rewrite of an old chapter.

Senator Broadsword asked whether the medication administration provision would cause an added burden to Developmental Disabilities Agencies?

Cameron Gilliland said the Board of Nursing rules mandate that anyone delivering medications must take a three-hour, $60 class. So, it would be an additional burden but certainly not an undue hardship.

Senator Broadsword asked for an explanation of what the proposed supportive counseling will include.

Cameron Gilliland explained that social workers with a BSW were allowed to provide psychotherapy until the change in the Board of Social Work requirements. Supportive therapy can be provided by social workers with a BSW and the Department would like to make this service available.

Senator Werk asked whether the rules would increase costs to the provider community.

Cameron Gilliland stated that any increase in cost would be minor. It was not the intention throughout the rule-making process to increase costs.

Senator Compton stated that provider agencies might be concerned with the long-term financial impact of the rule.

Corey Makizuru, Secretary/Treasurer, Idaho Association of Developmental Disabilities (IADDA), testified in support of the rule, but expressed concern that the requirements may increase paperwork, personnel, training, and operational business costs. The Association asked that the rule be approved but left open for change and clarification, and specific changes were recommended. His testimony is included as an attachment (Attachment #4).

Senator Compton stated that the committee would ask the Department to revisit the rule to incorporate the recommendations brought forward by the Association.

Senator Keough asked if Mr. Makizuru felt confident that the Department would work with the Association to make changes.

Corey Makizuru said he did.

Senator Compton mentioned the Medicaid reimbursement rate concerns expressed by many providers and provider associations in recent

meetings. He asked Bill Walker whether the federal Medicaid program stipulated what providers are reimbursed or whether the state has latitude to make that decision.

Bill Walker, **Deputy Director, Department of Health and Welfare,** said the state has latitude to decide, but the federal program asks that the state consider access, to avoid limiting availability, when making the decision.

Discussion followed on the growth of disability services in the state in the past several years. Several factors contribute to the rising numbers.

Senator Broadsword asked about the burden produced by the semi-annual surveys, an unfunded mandate.

Corey Makizuru said the Provider Status Review is a requirement which requires additional reporting three months after the Review. Some estimates indicate it takes four to six hours to complete each report. This rule will require providers to spend an estimated 320 to 480 hours completing paperwork for which there may be little necessity.

Senator Broadsword asked Mr. Gilliland whether the semi-annual surveys are federally mandated.

Cameron Gilliland stated that the certification surveys are biannual, whereas Status Reports are a requirement of the Behavioral Health Care Management Program and are not mentioned in these rules. There is, however, a requirement for a formal review of therapy every six months which is for the agency itself, not for the Department. The Department only looks at the biannual survey.

Senator Compton asked where the confusion was occurring.

Corey Makizuru pointed to a section of the rule which references the semi-annual survey requirement. There may be confusion on the difference between the survey and the review.

Senator Werk asked about the doubling of individuals offering services and requested a detailed breakdown of when these people came on board, what services they provide, whether they serve adults or children, what the doubling means, and when and how the doubling occurred.

Bill Walker said he intends to collect that information.

Further discussion on the privatization of disability services ensued.

MOTION: **Senator Coiner** moved to approve Rule 16-0309-0601. **Senator Darrington** seconded the motion. The motion was approved unanimously through a **voice vote**.

RULE # 16-0411-0501: **Senator Darrington** asked if **Rule 16-0411-0501, Rules Governing Developmental Disabilities Agencies** (Pending), does no more than repeal the docket which Rule 16-0411-0502 replaced.

Cameron Gilliland affirmed and asked for the committees approval of the rule.

MOTION: **Senator McGee** moved to accept Rule 16-0309-0601. **Senator Keough** seconded the motion. The motion was approved unanimously through a **voice vote**.

ADJOURN: Being no further business, the meeting was adjourned at 4:15 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Legislative Presentation for Credentialing Rules, Docket 16-0309- 0601

Mister Chair, members of the Committee, my name is Pat Guidry. I am the Mental Health Policy subject matter expert in the Division of Medicaid.

This afternoon I am pleased to present rules written to implement a Mental Health Credentialing Program. The Department is seeking your approval of docket # 16-0309-0601 located behind the tab, 3-11 in your Health Et Welfare book of rules. These rules are Temporary so that the Department can implement the Credentialing process beginning in early 2006. The Dept is committed to using the public negotiated rule making process to finalize these rules and add specificity.

Credentialing is the process by which Medicaid Mental Health Clinics and Psychosocial Rehabilitation Agencies are approved by the Department as having met the requirements of the provider agreement and professional standards defined in rule. The purpose of the Credentialing Program is to establish that all Medicaid mental health agencies and clinics adhere to “best practice” quality standards and comply with IDAPA rules in a consistent manner across the state. The goal of the Credentialing Program is twofold: 1: to ensure that providers of Medicaid Mental Health Clinic and Psychosocial Rehabilitation services have the necessary skills and qualifications to deliver appropriate and effective mental health services as currently described in rule, in a safe, efficient and competent manner; and 2: to ensure that provider agencies and clinics have built a sufficient administrative structure in order to fulfill the requirements described in rule for adequate staffing patterns and supervision.

(Attachment #1)

of staff, on-going staff education regarding Medicaid processes and best practices including ethics, professional record-keeping and appropriate billing practices.

The Department has accumulated data based on utilization patterns, work completed by the Bureau of Audits Et Investigations, consumer and provider complaints and a Quality-Compliance Review conducted this summer. Indications have been that there is a need to bring the entire Medicaid mental health provider population up to professional standards of care and operation that only a portion presently operate at.

Because of the appropriation provided by the 2005 Legislature in House Bill 385 the Division of Medicaid has been able to hire a staff member dedicated to the work of coordinating the Credentialing process in concert with the contracted Credentialing entity. The contractor is responsible for all aspects of Medicaid mental health credentialing management incLuding application reviews, site inspections and appropriate provider education. The Department will be assured, upon an agency earning the credential, that the provider meets quality standards, utilizes qualified practitioners and provides services that meet the needs of Medicaid participants.

During the course of developing the parameters of the Credentialing Program the Department included representatives of providers, consumers and mental health advocates. The Department has received communication from the Idaho

Mental Health Providers Association that they are in support of the Department implementing a Credentialing program.

The main features of these rules provide for the following:

- Credentialing is defined in operational terms
- Requirements of the credentialing process are described
- Some of the elements providers can expect to encounter once credentialing is implemented are outlined
- Rules requiring ethical behavior and training in ethics have been added
- Building standards for Psychosocial Rehabilitation agencies have been added, identical to the building standards that currently exist in rule for mental health clinics
- The role of Licensed Marriage & Family therapists is expanded consistent with this profession s scope of practice as regulated by the Bureau of Occupational Licensing.

This concludes my presentation to the Committee on this docket. I respectfully ask the Committee to extend these rules as Temporary so that the Department may begin the work of ensuring that the Medicaid mental health provider community serves the citizens of Idaho safety, efficiently and competently.

I will be glad to answer any questions you might have at this time.

Mental Health Provider Association of Idaho

Testimony on Docket # 16.0309.0601

Mr./Madam Chairman and members of the committee,

My name is Gregory Dickerson, and I am testifying on behalf of the Mental Health Provider Association of Idaho on the rules before you. We are in support of the credentialing process described in these rules, and acknowledge that they are merely a starting point in the process of developing this management initiative. However, we have identified a technical correction that needs to be addressed, and offer solutions for how it may be resolved subject to your approval.

The language in sections *455* for PSR and *465* for mental health clinics are structured basically the same with one notable exception. Section *455.02.h.ii* reads *(Additional causes for denial of credentials include the following:*) The provider agency or provider agency applicant has been convicted of a criminal offense related to the provider*s or applicant*s involvement in any program established under Medicare. Medicaid or the Title XX Services Program, or has been found to have committed any offense involving theft, or abuse, neglect or exploitation of another person. This differs from section 465.02.h.ii The provider agency or provider agency applicant has been convicted of. or is under investigation for fraud, gross negligence, abuse, assault, battery, or exploitation.

The issues that these sections attempt to address are clearly of utmost importance. In fact, the Department also addresses them in the rules in IDAPA 16.0309. sections 208 through

213.

That said, there is a great deal of difference between being convicted of an offense and being under investigation. In fact according to testimony provided by Mond Warren during the 2004 legislative session on the rules for his unit; 30% of cases referred for investigation to the Bureau of Audits and Investigations were resolved in "No Action" being taken. Moreover, 3 3.8% of the investigations resulted in recoupment of funds from providers when they uncovered compliance issues. Section 201.13 of the rules that govern the activities of the Bureau of Audits and Investigations states that the recoupment may occur through the collection of future claims paid. If a provider*s credential is revoked pending the outcome of an investigation, their ability to re-pay any future overpayment determination may be compromised.

It appears that the solution may be to coordinate the functions of these two sets of rules, and thus the two oversight entities involved. We have shared our concerns with the Department, and have committed to work cooperatively with their representatives to address the issues more appropriately in the rule, as well as assist in capturing future credentialing standards to be developed into promulgated rule.

We request that this committee reject section *465* .02.h.ii. and approve the remainder of this docket of rules. Our association is also willing to meet immediately with the Department to draft language for sections 455.02.h.ii and 465.02.h.ii for approval later in this session if that is allowable.

(Attachment #2)

Name
DD Program Manager in FACS

I m here to ask you to adopt the changes in the Developmental Disability Agency Rules listed in your booklet under tab 15 Docket Number 16-0411-0502

SACCO: These changes in the DDA rules will make DDA programs more effective, clarify what is expected of providers, and assure the continuum of services for individuals with DD as required by Idaho statute.

What are the DDA Services?

Developmental Disability Agency Services or DDA services are therapeutic services designed to help individuals with Developmental Disabilities learn to live more independently and gain skills. DDA Services can take place in the community, home, or in a center and are widely available in Idaho. DDA s serve a wide variety of therapeutic needs. Services at DDA s generally include Developmental Therapy, Speech Therapy, OT, PT, and psychotherapy. DDA s can also provide Pharmacological

(Attachment #3)

management, crisis supports and Intensive Behavioral Interventions.

It is the Department s role to help assure clinical competency and sound practice in the DDA s while maintaining fiscal responsibility. Idaho Statute 39-4602 mandates that the state make available a continuum of services for individuals with DD. DDA s have been and continue to be an important part of that continuum. We could not effectively serve individuals with DD in Idaho without our DDA providers.

Developmental Therapy

Developmental Therapy is the key DDA service. It is the vast majority of what all but a few agencies provide. Developmental therapy is defined in the new rules as therapeutic intervention and positive behavioral techniques that result in skill acquisition or prevent regression in the areas of Self-care, Receptive and expressive language, learning, mobility, self-direction, capacity for independent living and economic self-sufficiency. Individuals with DD can receive up to 30 hours of Developmental therapy a week.

DDA s in Idaho

In considering these rules it is Instructive to look at the last 5 years of DDA services

in Idaho

In FY 2000 51 DDA 's licenses at $26, 025,359
Served 4,075 individuals
In FY 2005 105 DDAs licenses at $51,763,447
Served 4,585 individuals

In the last five years the number of DDA licenses has doubled from 51 to 105 last year. Additionally the amount of Medicaid billings generated by the DDA s has nearly doubled from a little over 26 million to 51.7 million last year. The number of individuals served has increased by 13% in the last five years. *4075 in 2000 to 4585 last year.*

IBI

Additionally in 2001 a new service for children called Intensive Behavioral Interventions or IBI was created. Intensive Behavioral Interventions or IBI serves children with severe behavioral issues and severe delays in social and communication skills. IBI was created principally for children with autism but serves other children with other disabilities as well. IBI

was designed to be a short-term service that helps children overcome maladaptive behaviors so they can participate in less intensive services. Ideally a child will access Intensive Behavioral Interventions for short periods of time a they deal with challenges. A child total time receiving Intensive Behavioral Interventions is limited to 36 months. Currently about 500 children in Idaho receive IBI services.

Intensive Behavioral Interventions is in a word “Intense”.
IBI therapists must meet a higher educational standard and pass a supervised project in order to become certified. Therapy delivered under IBI must be effective and must show progress or it is questioned by the Department. IBI services are reviewed and prior-authorized by the department every four months. Part of the motiviation for this complete rewrite of the rules was to help better define and support IBI services.

Intensive Behavioral Interventions reimbursement rate that is twice the amount of developmental therapy. Cost over $11,000,000 in FY05. IBI also has the distinction of being the only major DDA service that is Prior authorized

for children. Language in the current DDA Rule states that all DDA services for adults are to be prior authorized by the department but most services for children are not authorized by the department.

Rule Changing Process

About two years ago we set out to revise the DDA rules. The rules have not been comprehensively rewritten in 8 years. This rewrite consolidates and coordinates the revisions that have occurred over the past 8 years. Our goal in rewriting the rules was not to affect any major change to DDA services but to assure that the rules were more useful, and enforceable.

We engaged in Negotiated Rulemaking.

- From April 2004-June 2005
- Met for an entire day almost every month for 14 months with stakeholders representing parents, providers and advocates.

  Including:

  - Co-Ad, DD Council, IADDA, IPUL, and parents and family members of people with DD

- As a result of these meetings we printed a draft of DDA rules for public comment in Aug ust.

Following the procedure for negotiated rule-making we held three public meetings

- Idaho Falls,
- Coeurd*Alene,
- Boise

As a result of public comment we made numerous changes to the proposed DDA Rules.

In November, the Board of Health and Welfare approved the draft rules with minor changes. These changes were requested by the Idaho Association of Developmental Disability Agencies (IADDA). With those minor changes in place the association assured the board that they supported the draft rules.

Changes to the DDA Chapter

In general the changes to the DDA chapter: Aligned the rules with other state and federal rules, laws and programs. Clarified and Organized the language and structure of the rules or were necessary for the safety or effectiveness of the services

Changes made to align the rules with the BH/CM and ITP Programs. Specifically inserting requirements from the federal IDEA Act that support the lIP Program.

The rules now also contain requirements surrounding eligibility and the Intensive Behavioral Interventions program that were previously in interpretive guidelines. This subjects those requirements to the rule-making process, gives those requirements the force of law and eliminates the need for guidelines.

Another set of changes to the rules updates the requirements around IBI specifically assuring that DDA*s that provide IBI will have a continuum of services including developmental therapy.

Responding to needs around Intensive Behavioral Interventions

- *Unfortunately, we have seen some agencies qualifying as DDA 's to deliver IBI services only. This causes two problems:*
    - *Agencies may have little skill or interest in helping consumers reach developmental milestones. A DDA should be addressing both behaviors and development.*
    - *Intensive Behavioral Interventions may be a sporadic service where a child may enter it as they have behaviors and may move away from it as they gain control. If the agency only offers Intensive Behavioral Interventions the child must pick another agency for developmental therapy. This constant shifting of agencies can be harmful to a child as transitions are often difficult especially for children who have autism who make up the bulk of the consumers receiving Intensive Behavioral Interventions.*

To deal with these problems we added two requirements to the rules. All agencies must have a strong Developmental Therapy background prior to the provision of Intensive Behavioral Interventions and all agencies must have a developmental therapy program.

- Agency certification and staff qualification requirements were consolidated in sections of the new rule.
- Terminology more consistent throughout rule.
- Service requirements were made more realistic for providers. OT, PT, SLP, Psychotherapy
- Facility survey and health sections were consolidated and changed to be safer and more effective.
    - An example of this is in the area of the Medication Administration. Reviewed Medication Administration rules and found them inadequate to protect consumers. They allowed anyone at the agency to dispense medications to consumers. Additionally we experienced situations were individuals were coming up short on their

medications; consumers were sharing medications and one consumer ended up in the hospital with an overdose. Adopted the requirements from the Board of Nursing Rules around Unlicensed Assistive Personnel delivering Medications.

In Summary:

The changes to the DDA rules revise and update the rules to better serve individuals with DD. The Department crafted the rules in concert with providers, families and advocates as part of the negotiated rule-making process. These changes in the DDA rules will make DDA programs more effective, clarify what is expected of providers, and help assure the continuum of services for individuals with DD.

We respectfully request that you adopt these rules.

Thank you

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 24, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Keough, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senators Darrington, Brandt, McGee

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:05 p.m. **Vice Chairman Broadsword** assumed the Chair for rules review. The order on the agenda was changed as follows.

RULE # 16-0319-0502: **David Simnit, member of the Policy Team, Division of Medicaid, Department of Health and Welfare,** presented **Rule 16-0319-0502, Rules Governing Certified Family Homes** (Pending).

Senator Broadsword asked whether any changes were made to the rule as a result of the three hearings and comments received on it.

David Simnit said that through the three hearings and the 21-day comment period, the Department heard four testimonies and received eight written comments which led to several changes in the rule.

David Simnit continued by explaining that the chapter of rules governing certified family homes has been completely rewritten due to statute changes made during the 2005 legislative session under H 265. The rule does not make dramatic changes but aligns it with the statute changes, updates language to differentiate certified family homes from facilities, details the requirements to become a certified family home, and creates better protection for individuals living in the homes. The more substantive changes include: removal of references to facility, operator and staff, to make it clear that these are family homes which provide services to one or two residents; clarification on who is required to have criminal history background checks and when the checks are to be completed; the amount and type of required training, both initial and ongoing; detailed information about completing a nursing facility waiver, when required; and an improved definition of requirements for short-term care and supervision when the primary provider is temporarily unavailable.

Senator Werk asked about the amount of new material in the rule, given so “few strike-outs.”

David Simnit stated that the entire chapter has been rewritten. The strike-outs are the changes made as a result of public comments.

Senator Kelly asked whether Docket 16-0319-0501 is simply a repeal of the old rule which has been rewritten in 16-0319-0502.

David Simnit said it is.

Senator Werk explained the difficulty that legislators have in trying to determine what parts of a rule are changed and what parts are not when a rule is completely rewritten, given only the paper in front of him.

Senator Broadsword concurred with Senator Werk and asked whether this rule is a compilation of other rules which are being revamped.

David Simnit explained that there was a previous chapter governing certified family homes, but as a result of the statute change and the need for updates, the Department thought it best to rewrite it and reorganize it to be more user-friendly. It revamps the previous chapter.

Senator Broadsword stated, "A lot of this was already in rule."

David Simnit affirmed.

Senator Werk asked whether substantial pieces have been rewritten.

David Simnit said most of the changes are wording changes to align with the statute. The more substantive changes were laid out in his opening remarks.

MOTION: **Senator Compton** moved to accept Docket 16-0319-0502. **Senator Kelly** seconded the motion. The motion passed unanimously through a **voice vote**.

RULE # 16-0319-0501: **David Simnit, member of the Policy Team, Division of Medicaid,** presented **Rule 16-0319-0501, Rules Governing Certified Family Homes** (Pending). This docket is a repeal of the previous chapter governing certified family homes as it has been rewritten.

MOTION: **Senator Compton** moved to accept Docket 16-0319-0501. **Senator Coiner** seconded the motion. The motion passed unanimously through a **voice vote**.

RULE # 16-0309-0506: **Paul Leary, Bureau Chief, Division of Medicaid, Department of Health and Welfare,** presented **Rule 16-0309-0506, Rules Governing the Medical Assistance Program** (Temporary). His testimony is included as an attachment (Attachment #1). The rule deals with Medicaid policy on the review and analysis required to determine coverage of investigational procedures and treatments; adds a definition of experimental procedures and treatments; updates rules for bariatric (weight-loss, or gastric bypass surgery) to meet current standards; and clarifies limitations for organ transplants.

Senator Broadsword asked whether the rule expands or clarifies when

non-surgical treatment for obesity can be covered by Medicaid, since the treatment often coincides with Diabetes and other severe medical conditions.

Paul Leary said the rule clarifies.

MOTION: **Senator Coiner** moved to approve Docket 16-0309-0506. **Senator Kelly** seconded the motion.

Senator Werk asked whether a young transplant patient could sort through "this maze, to receive her transplant."

Paul Leary said the Department's job is to collect all the information necessary to aid in a patient's decisions.

The motion passed unanimously through a **voice vote**.

RULE # 16-0309-0502: **Christine Baylis, Alternative Care Coordinator, Division of Medicaid, Department of Health and Welfare,** presented **Rule 16-0309-0502, Rules Governing the Medical Assistance Program** (Pending). Her testimony is included as an attachment (Attachment #2). She reviewed rules regarding personal care services to persons with cognitive and behavioral issues in assisted living facilities and certified family homes.

Senator Broadsword asked whether the additional reimbursement hours reflect a change from previous requirements.

Christine Baylis said there were three reimbursement levels, with a maximum of 16 hours of care per week at the current reimbursement rate. The new fourth level is 12.5 hours, which places the rate between the second and third levels. The Department considers the additional costs to be negligible because only a small number of individuals will be affected.

Senator Broadsword asked whether extending the personal care services would help keep the elderly in their homes longer.

Christine Baylis said the services provided at this level generally take place in a certified family home or assisted living facility, not in the individual's home.

Senator Compton asked whether there was any opposition.

Christine Baylis said there was not, and the work-group which drafted the rule was made up of providers and advocates.

MOTION: **Senator Werk** moved to approve Docket 16-0309-0502. **Senator Coiner** seconded the motion. The motion passed unanimously through a **voice vote**.

DISCUSSION: **Chairman Compton** assumed the Chair to lead a discussion about the process of reviewing and approving minutes.

ADJOURN: Being no further business, the meeting was adjourned at 3:40 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

BEFORE THE
HEALTH AND WELFARE COMMITTEES

IDAHO DEPARTMENT OF HEALTH AND WELFARE
RULE DOCKET 16-0309-0506

Madam (Mister) Chair and Members of the Committee:

My name is Paul Leary. I am a Bureau Chief in the Division of Medicaid. The Department is asking you to extend docket number 16-0309-0506.

This docket can be found behind **Tab** 11 in your Health and Welfare Rule Booklet. This docket published in the December Administrative Bulletin as a Temporary and (proposed) rule and applies to Medicaid policy related to review and analysis required to determine coverage of investigational procedures and treatments; adds a definition of experimental procedures and services; updates rules for bariatric (weight loss surgery — you may have heard of this as gastric bypass surgery) to meet current standards; and clarifies limitations for organ transplants. These rules are consistent with comments received from the legislature during the last session and House Bill 324 that was passed by the 2005 legislature.

We have added a new section to the Medical Assistance rules that addresses the review process that the department undertakes to determine whether or not investigational procedure or treatment is the right treatment for the participant and should be covered by Medicaid. There are essentially two processes that are undertaken:

(Attachment #1)

A clinical focused case review that assesses:

- Health benefit and risks of the procedure or treatment for the Medicaid participant
- If standard and non-investigational alternative procedures or treatments have been tried and the effectiveness of these procedures or treatments
- Coverage or non-coverage decisions by major public and private payers
- If appropriate, whether or not Ethics Committee review has taken place

A cost benefit analysis that includes at minimum:

- The cost of the procedure or treatment in question
- Comparison of the anticipated long-term medical costs that would be incurred if the procedure is allowed or not allowed.
- Potential long-term impact the approval may have on the Medical Assistance program.

We added a definition of experimental treatments and procedures to the section of Medical Assistance rules that deals with Services, Treatments and Procedures Not Covered By Medical Assistance (section 065) consistent with HB 324.

The rules pertaining to surgical procedures for weight loss have been amended to reflect current criteria for identifying clinically severe obesity. This criterion is

consistent with criteria used by Medicare and other major national payers.

The section of the Medical Assistance rules dealing with Organ

Transplants (section 081) was amended for clarification. The most significant change defines when Multi-organ transplants may be covered. Other changes in this section were either to update terms (HCFA to CMS)

or clarify language.

Comments were received from the Legislative Services Office stating that they reviewed the proposed changes and that they were pleased to report that no objections will be filed. There were no public comments received and there was not a request for a public hearing.

This concludes my presentation to the Committee on this docket. To help make sure that our Medicaid participants receive the right procedures and treatments that meet their medical needs I respectfully ask the committee to extend temporary rule docket 16-0309-0506.

I would be glad to answer any questions that you have at this time.

RULE DOCKET

Mister Chairman, Members of the Committee, my name is Christine Baylis. I am an Alternative Care Coordinator for the Division of Medicaid.

I will be reviewing rules regarding personal care services provided in assisted living facilities and certified family homes to persons with cognitive and behavioral issues. This docket can be found behind tab 11 in your rules notebook. The docket number is 16-03 09-0502. This rule allows the Department to fund the right care in the least restrictive setting. These rules came before you in the 2005 legislative session as temporary rules with an effective date of March 1, 2005 and were approved

This rule change resulted from a request from the Department**'**s Personal Care Services Oversight Committee. They requested a workgroup to review issues regarding assessment results for individuals converted from the Aid to the Aged, Blind & Disabled cash assistance to Medicaid personal care services. This conversion was a result of House Concurrent Resolution 110 of the 2002 Legislative Session. In that conversion some individuals received reduced reimbursement.

The work group discovered those individuals typically were assessed more physically capable of handling activities of daily living, but were less capable due to cognitive and behavioral issues associated with specific diagnosis. The data showed these individuals had a diagnosis of one or more of the following: bipolar disease, schizophrenia, major depression, mental retardation, and Alzheimer**'**s disease.

At the time the existing reimbursement was based on three levels for minimum, moderate and maximum resource needs. The work

(Attachment #2)

group recommended a fourth level that was between the 2nd and 3rd level in service hours but tied to a specific group of diagnosis as outlined by the data.

The slight increase in cost was anticipated to be offset by reductions in higher cost services such as crisis care, emergency room use, and hospital services. When care is not adequately managed and sufficiently resourced, assisted living providers and certified family home providers cannot reasonably mange individuals living in their facilities and homes. We have reviewed the data over the past 6 months and preliminary analysis indicates the utilization and cost trend for these higher cost services has been reduced as a result of this policy change.

I respectfully request that this committee extend these rules. They allow the department to fund the right care in the least restrictive setting and to meet the original objectives of HCR 110.

I would be glad to answer any questions you may have.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 25, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:03 p.m.

GUBER NATORIAL APPOINTMENT: **Donald Gross,** of Coeur d'Alene, came before the committee to be appointed to the State Board of Health and Welfare, term commencing January 11, 2006 and expiring January 7, 2007. The vote on his appointment will be held at a later date, to allow the general public opportunity to comment. **Senator Compton** spoke highly of Mr. Gross and gave a brief overview of his background and experience. (Attachment #1)

Donald Gross explained his history in the health profession, explaining how his disabled son motivated him to pursue the profession. It is his way of giving back. His goals are to raise the quality of care, look at ways in which the public and private sector can work together, and to give back to the state through his service.

Senator Darrington asked whether Mr. Gross had attended any Board meetings yet.

Donald Gross said he had not.

Senator Darrington recommended that Mr. Gross read the Idaho Code on the responsibilities associated with his position.

Donald Gross said he would.

Senator Compton commented on the unique viewpoint which Mr. Gross would bring to the chair as a result of his son.

Senator Broadsword asked if Mr. Gross found the Department of Health and Welfare to be receptive to change or difficult to work with.

Donald Gross said the Department is receptive. Cooperation is necessary for change to happen.

MINUTES: **Senator McGee** moved that the minutes from January 16 be accepted. **Senator Werk** seconded the motion. The motion carried by a **voice vote.**

RULE # 16-0305-0601, REPORT: **Vice Chairman Broadsword** assumed the Chair for rules review.

Peggy Cook, Program Manager, Division of Welfare, Department of Health and Welfare, updated the committee on progress made in coming to an agreement with providers on **Rule 16-0305-0601, Rules Governing Eligibility for the Aged, Blind and Disabled** (Temporary), which was debated before the committee on January 17. Her testimony is included as an attachment (Attachment #2). The Department reached a compromise with providers which decreases the amount of the client allowance-increase by $10 and allows the providers to increase charges for rent, utilities, and food by $10 more than the recommended four-dollars for 2006.

Senator Broadsword said no vote will take place on the rule until a full hearing can be scheduled.

Senator Darrington asked whether the increase of reimbursement rates to providers can be done through rule.

Peggy Cook said the Department can leave a given amount of income available for providers to increase rent, utilities, and food charges.

RULE # 22-0105-0501: **Nancy Kerr, Executive Director, Idaho Board of Medicine,** presented **Rule 22-0105-0501, Rules Governing Licensure of Physical Therapists and Physical Therapist Assistants** (Pending). Her testimony is included as an attachment (Attachment #3). This rule deals with continuing education, clarifies the function of the licensure board, and updates terminology.

Senator Compton asked how the Therapist Association feels about the changes and if there were any objections.

Nancy Kerr said the Association was involved in drafting the changes.

Jeremy Pisca, representative of the Idaho Physical Therapy Association, stood and said the Association has no objections.

Senator Broadsword asked how the licensing board is funded.

Nancy Kerr said the funds come through the Board of Medicine's licensee fees.

MOTION: **Senator Coiner** moved that Docket 22-0105-0501 be accepted. **Senator McGee** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 22-0111-0501: **Nancy Kerr, Executive Director, Idaho Board of Medicine,** presented **Rule 22-0111-0501, Rules for the Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho** (Pending). Her testimony is included as an attachment (Attachment #3). This rule provides for a prorated fee for temporary permits and licenses for less

than one year consistent with Idaho Code.

Senator Werk asked what a polysomnographer does.

Nancy Kerr says a polysomnographer works in a sleep lab.

Senator Werk asked whether their criminal history is checked before being hired at a sleep lab.

Nancy Kerr said no and explained that there are usually no medications given in a sleep lab and seldom does a polysomnographer work alone.

Senator Broadsword asked if sleep labs are generally located in hospitals.

Nancy Kerr said yes, but there are also independent sleep labs throughout the state.

MOTION: **Senator Compton** moved that Docket 22-0111-0501 be accepted. **Senator McGee** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 22-0101-0501: **Nancy Kerr, Executive Director, Idaho Board of Medicine,** presented **Rule 22-0101-0501, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Surgery in Idaho** (Pending Fee Rules). Her testimony is included as an attachment (Attachment #3). The changes include clarification and simplification of definitions, reorganization of sections, deletion of old terminology, clarification and simplification of requirements for foreign medical graduates, etc.

MOTION: **Senator McGee** moved that Docket 22-0111-0501 be accepted. **Senator Compton** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 24-0301-0501: **Rayola Jacobsen, Bureau Chief, Idaho Bureau of Occupational Licenses,** introduced Sandee Hitesman and Roger Hales. **Sandee Hitesman,** representing the **Bureau of Occupational Licenses and the Board of Chiropractic Physicians,** presented **Rule 24-0301-0501, Rules of the State Board of Chiropractic Physicians** (Pending). Her testimony is included as an attachment (Attachment #4). She gave an overview of the changes to the rule, including updates, the addition of a definition of Athletic Trainer, the addition of supervision of an Athletic Trainer, and the addition of a deadline to file an appeal on a decision made by the Chiropractic Peer Review committee.

MOTION: **Senator Coiner** moved that Docket 24-0301-0501 be accepted. **Senator Brandt** seconded the motion.

Senator Darrington explained his pleasure in voting for the rule to atone for not voting for the legislation originally, because in retrospect, it is very useful legislation.

The rule was approved unanimously through a **voice vote**.

RULE # 24-1501-0501: **Roger Hales, private practice lawyer, representing the Bureau of Occupational Licenses,** presented **Rule 24-1501-0501, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists** (Pending Fee Rule). The changes include: an update in the code of ethics relating to marriage and family therapists; an updated internet address; establishing a deadlines regarding applications; making the supervised experience requirement more flexible to accommodate remote, rural locations; allowing a therapist to be a supervising counselor; language updates; etc.

Senator Compton asked whether there was any objection from chiropractors to the rule.

Roger Hales said he was unaware of any.

MOTION: **Senator Compton** moved that Docket 24-1501-0501 be accepted. **Senator McGee** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 24-0601-0501: **Roger Hales, private practice lawyer, representing the Bureau of Occupational Licenses** presented **Rule 24-0601-0501, Rules Governing the Idaho Board of Hearing Aid Dealers and Fitters** (Chapter Repeal) (Pending). Last year, legislation passed dealing with the Speech and Hearing Services Board which made this repeal necessary.

MOTION: **Senator McGee** moved that Docket 24-1501-0501 be accepted. **Senator Coiner** seconded the motion.

Senator Werk asked whether there were any comments on the rule.

Roger Hales said there was not.

Senator Werk referred to a committee debate, when the original legislation was being passed, about the exclusion of language regarding non-profits, particularly the Elks Hospital. He asked for an update on whether the Elks Hospital is now directly marketing and using their size as a competitive advantage in the marketplace.

Roger Hales said there has been no issue brought before the Board along those lines.

Senator Compton asked whether new rules are positioned to take the place of the repeal if it is passed.

Roger Hales said a new set of rules would be developed by the Board. These old rules are no longer used or effective. He did not foresee a problem.

The rule was approved unanimously through a **voice vote**.

RULE # 24-1101-0501: **Roger Hales, private practice lawyer, representing the Bureau of Occupational Licenses**, presented **Rule 24-1101-0501, Rules of the State Board of Podiatry** (Pending). The rule contains an update to the

code of ethics; an increase in residency requirements to include 12 months as a surgical resident plus 12 months medical residency, as a result of legislation passed last year which expanded the scope of podiatry; some housekeeping changes; an increased competency requirement; and a designation of which procedures must take place in a hospital. There has been no opposition.

MOTION: **Senator Coiner** moved that Docket 24-1501-0501 be accepted. **Senator McGee** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 24-1901-0501: **Roger Hales, private practice lawyer, representing the Bureau of Occupational Licenses,** presented **Rule 24-1901-0501, Rules of the Board of Examiners of Residential Care Facility Administrators** (Pending Fee Rule). Some of the changes to the rule include: replacing the phrase "welfare of a person" with "health or safety of a person" to clarify meaning; increasing readability in the section dealing with continuing education; and raising the Board's fee.

Senator Darrington asked what the statute's fee cap is.

Roger Hales said he believed it was $100, but he was not sure.

Senator Darrington explained that in the past, fee increases had to happen through a change in statute. The new system, raising fees by rule, is much more efficient.

Senator Compton asked about the requirement that an applicant be "of good moral character." He asked for clarification on the changes.

Roger Hales clarified the reason to change "welfare" to "health and safety," as discussed in the House last year.

MOTION: **Senator Werk** moved that Docket 24-1901-0501 be approved. **Senator Compton** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 24-1401-0501: **Roger Hales, private practice lawyer, representing the Bureau of Occupational Licenses,** presented **Rule 24-1401-0501, Rules of the State Board of Social Work Examiners** (Pending). The Board has expanded the supervision requirement, making it more flexible to allow an individual to get credit for attending a group session rather than one-on-one sessions only.

Senator Broadsword asked whether that change was a source of contention last year.

Roger Hales said this was addressed, though not the specific source of concern. Contention came further on in the rule, with the Board's move to make the requirements easier for people to become supervisors, and the addition of educational requirements to become a supervisor. These concerns have been addressed appropriately and there have been no objections to the rule.

MOTION: **Senator Compton** moved that Docket 24-1401-0501 be approved. **Senator Brandt** seconded the motion. The rule was approved unanimously through a **voice vote**.

RULE # 24-2301-0501: **Roger Hales, private practice lawyer, representing the Bureau of Occupational Licenses,** presented **Rule 24-2301-0501, Rules of the Speech and Hearing Services Licensure Board** (New Chapter) (Pending Fee Rule). These are the new rules adopted by the Speech and Hearing Services Board. They are very standard rules to initialize the Board's operations. He discussed the fees associated with the Board, as well as the national exam process to become licensed.

Senator Compton asked whether there had been any objections to the rule.

MOTION: **Senator Compton** moved that Docket 24-2301-0501 be approved. **Senator Brandt** seconded the motion.

Senator Broadsword asked whether the rule has been in effect since August and whether there have been any complaints about it.

Roger Hales said it has been in effect since August and there have been no complaints to the Board.

Senator McGee recalled debate last year about who was to serve on the Board.

Rayola Jacobsen explained the Board makes sure there is a representative from each profession or else there is no quorum at a meeting. The professions have begun working as a team and the debate has subsided.

Senator McGee commended Ms. Jacobsen on the organization of her rules and their presentations. The committee concurred.

The rule was approved unanimously through a **voice vote**.

RULE # 24-0501-0501: **Roger Hales, private practice lawyer, representing the Bureau of Occupational Licenses,** presented **Rule 24-0501-0501, Rules of the Board of Drinking Water and Wastewater Professionals** (Pending Fee Rule). The Board is reducing the fee from $60 to $45. Beyond that, the changes are just housekeeping changes.

Senator Darrington asked for Mr. Hales' opinion on whether there are any attempts by the Boards to create licenses that preclude people from joining the profession.

Roger Hales said the Board is cautious about this and never attempts to be exclusionary.

MOTION: **Senator McGee** moved that Docket 24-1401-0501 be approved. **Senator Keough** seconded the motion. The rule was approved unanimously through a **voice vote**.

DISCUSSION: **Senator Compton** and the committee discussed the progress in registering contractors with **Rayola Jacobsen**.

RULE # 23-0101-0501: **Sandra Evans, Executive Director, Idaho State Board of Nursing,** presented **Rule 23-0101-0501, Rules of the Idaho Board of Nursing** (Pending Fee Rules). Her testimony is included as an attachment (Attachment #5). The fee to renew an Idaho nursing license will increase from $50 to $90, and the fee to endorse a nursing license issued by another state into Idaho will increase from $85 to $110. The rising cost of managing the work of the Board, due to processing background checks, and investigating and prosecuting increasingly complex disciplinary cases, has prompted the need for the increases.

MOTION: **Senator Compton** moved that Docket 23-0101-0501 be approved. **Senator Keough** seconded the motion. The rule was approved unanimously through a **voice vote**.

ADJOURN: Being no further business, the meeting was adjourned at 4:18 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Docket 16-0305-0601
Change to Basic allowance 2nd presentation 1-25-06 draft

M.Chairman, members of the committee

My name is Peggy Cook; I am a Program Manager in the Division of Welfare of the Department of Health and Welfare
I am here today to talk to you again about Docket 16-0305-0601 of the Rules Governing Eligibility for the Aged, Blind and Disabled which is behind tab 9 in your notebooks.
The department had asked for this rule change because of the impact of Medicare Prescription drug program on some of our clients. This rule as proposed increases the client basic allowance from $67.00 to $87.00
But this leaves only $4.00 of a $24.00 Social Security cost of living increase for providers to increase what they charge for rent, utilities and food or the (RUE).
Client advocates and representatives of the provider community spoke to you last week about this, and you asked us to work together to resolve this dilemma. We did as you asked and on Friday,January 20th staff from the Department met with client advocates, and representatives of the provider community to negotiate a solution that meets client and provider needs.
The group reached agreement in a couple of areas.
1.Clients need an increase in their basic allowance.
2.Providers need to be able to increase their charges to meet increased costs.
We reached a compromise that will change the client allowance to $77.00, giving each client an extra $10.00 and allow providers to increase charges for rent, utilities and food by $14.00 for 2006 rather than $4.00.
During the negotiations an effective date for this change was not established. Since this is a temporary rule, the $87.00 allowance is already in effect and clients received an extra
$20.00 in January. We would like ask this committee to approve the rule as written. The first of
February the Department will amend this rule with a temporary rule to be published and effective on
March 1 2006.

By quickly amending this rule we will;
Minimize the confusion to clients, minimize the financial impact to providers, and minimize the additional workload for our staff.
During this year we will also begin negotiated rule making with our stakeholders to establish a method to make annual adjustments to the client basic allowance and to set guidance for increases to the
RUF.

Thank you for your time and consideration, I stand for questions, there are Division of Welfare and Division of Medicaid staff in the audience who can also respond to questions.

(Attachment #2)

TESTIMONY BEFORE THE SENATE HEALTH AND WELFARE COMMITTEE
ON THE BOARD OF MEDICINE PENDING FEE RULES
DOCKET 22-0101 -0501
JANUARY 25, 2006

I.
DOCKET, TYPE, PURPOSE
A.
Docket Number 22-0101-0501 is a pending fee rule of the board of Medicine

B.
These rules were published in the October 5, 2005 Idaho Administrative Bulletin at which time all licensees were informed of the proposed changes through the Board newsletter. During the 21-day comment period, no comments regarding the proposed rules were received. The rules were published without change as pending rules in the December 2005 Idaho Administrative Bulletin

II.
OVERVIEW
A.The pending fee rule reorganizes the rules and simplifies language and removes outdated waiting periods and references to a state examination and oral examination no longer in use.

B The pending fee rules establish the framework for the application and renewal process for the volunteer license established with HB 41 in the 2005 legislative session

C The pending fee rule adds and clarifies grounds for discipline.

D.In a general housekeeping effort the names of national organizations are updated, superfluous language removed and sections reorganized

E.
Finally, the pending fee rule establishes a zero dollar license issue and renewal fee, eliminates reference to outdated state examination fee, and antiquated oral examination fee.

III.
SUMMARY OF CHANGES

A. Section 010- Housekeeping changes to simplify and clarify definitions

B. Sections 050- Eliminates sections and combines various portion of the old rule into one section defining qualifications for licensure for all applicants

C. Section 051- Deletes old terminology, clarifies and simplifies requirements for foreign medical graduates.

D. Section 052- Changes references in rule to reflect the new section number.

E. Section 076- Establishes qualification and requirements for a temporary license.

(Attachment #3)

TESTIMONY BEFORE THE SENATE HEALTH AND WELFARE COMMITTEE
ON THE BOARD OF MEDICINE PENDING FEE RULES
DOCKET 220101 -0501

F.

Section 077 Eliminates redundant explanations and clarifies qualifications for an inactive license

G.

Section 078 Defines prorated fees to bring license expiration in line with next regularly occurring expiration date.

H.

Section 080 Establishes requirements and licensing framework for a volunteer license.

I.

Section 100. Eliminates outdated state examination and oral examination license fees, establishes a zero dollar issue and renewal fee for the volunteer license.

J.

Section 101. Adds requirements and definition of adequate medical records, clarifies misuse of volunteer license for financial gain as grounds for discipline and adds interfering with an investigation or disciplinary proceeding as a grounds for discipline.

IV.

IMPACT OF PENDING FEE CHANGES

The rule changes will have negligible financial impact on the agency. Zero fees for volunteer license administration and regulation impact should be negligible due to small number anticipated. Uniform licensing fees will increase revenue approximately $35,000 per year.

TESTIMONY
BEFORE THE SENATE HEALTH AND WELFARE COMMITTEE ON THE BOARD OF MEDICINE PENDING RULES
DOCKET NUMBER 22-0105-0501
JANUARY 25, 2006

I. DOCKET, TYPE, PURPOSE

A. Docket Number 22-0105-0501 is a pending rule of the Board of Medicine. The pending rules are the result of the changes to the Physical Therapy Practice Act passed as HB 191 and 192.

B. The proposed rules were published on October 5, 2005 at which time all licensees were informed of the proposed changes through the Board newsletter. During the 21-day comment period, no comments regarding the proposed rules were received. The rules were published without change as pending rules in the December 2005 Idaho Administrative Bulletin.

II.
OVERVIEW

A. The pending rule creates a framework for continuing education, approval of courses, criteria for courses, and provides for specific criteria for exemptions and waivers by the Physical Therapy Licensure Board.

B. In addition, the pending rules clarify the role and function of the physical therapy licensure board.

C. In a general housekeeping effort, corrections and clarification in terminology are added

D. And finally, the rules provide continuing education requirements for licensure renewal and specify the penalties for failure to comply with the continuing education requirements.

III.
SUMMARY OF CHANGES

A. Section 010, Removes reference to the physical therapy advisory Committee, provides housekeeping changes and clarification of terminology

B. Section 016- Provides housekeeping changes and removes ambiguous language (a degree no less than Line 04)

C. Section 020, Changes the Physical Therapy Advisory Committee to a licensure Board, defines Board membership, adds public membership, and provides a framework for meeting frequency, and provides housekeeping changes for clarity.

D.

Section 31-32 Provides housekeeping clarification to terminology and clarification to application and fee requirements.

E.

Section 33- Indicate requirements for license renewal including the addition of continuing education for requirements

F.

Section 35 establish the continuing education requirement, establishes the criteria for approved programs, establish reporting and audit requirements, and establishes specific waiver and exemption criteria including those for military service and illness, and establishes penalties for failure to comply with the requirements.

TESTIMONY BEFORE THE SENATE HEALTH AND WELFARE COMMITTEE
ON THE BOARD OF MEDICINE PENDING RULES
DOCKET NUMBER 22-0111-0501
JANUARY 25, 2006

DOCKET, TYPE, PURPOSE

A.

Docket Number 22-0111-0501 is a pending rule of the Board of Medicine.

B.

The proposed rules were published on October 5, 2005 at which time all licensees were informed of the proposed changes through the Board newsletter. During the 21-day comment period, no comments regarding the proposed rules were received. The rules were published with a clerical change as pending rules in the December 2005 Idaho Administrative Bulletin.

II.

OVERVIEW

A.

The pending rule provides for a prorated fee for temporary permits and licenses issued for less than one year consistent with Idaho Code 54-4310

B.

In a general housekeeping effort, corrections and clarification in terminology are added

Ill.

SUMMARY OF CHANGES

A.

Section 005 -General housekeeping change to add the web address of the Board of Medicine.

B.

Section 32-Provides for a prorated fee for licenses and permits issued for less than one full year.

C.

Section 034- Provides for a prorated fee for licenses or permits that expire less than one year after issue.

My name is Sandee Hitesman and I am here on behalf of the Bureau of Occupational

Licenses and the board of Chiropractic Physicians.

We have received no comments regarding these proposed rules, pro or con.

I would like **to** begin with docket #24-0301-0501
Starting with page *#59,* the page numbers is listed at the bottom of the page, and going to the top of page #60, IDAPA 24 Title 03 Chapter 01 Section *05:* is deleting the board**'**s old E-mail and website address, and adding their new E-mail and website address.

Going to the middle of page #60. IDAPA 24, Title 03 Chapter 01 Section 010:
#5 is being added defming Athletic Trainer.

On that same page, Section *#560* is being added. Supervision of Athletic Trainers. This addition to the rule comes about due to the Athletic Trainer rules that were passed relating to Chiropractic Physicians supervising Athletic Trainer**'**s. IDAPA 22.01.10 allows Athletic Trainer**'**s to practice Athletic Training under the direction of a designated Idaho licensed Chiropractic Physician. The Chiropractic Physician must meet duties and responsibilities as outlined in IDAPA 22.01.10. The Chiropractic Physician rules currently do not address Chiropractic Physicians being supervisors. This rule will correspond with the guidelines in the Athletic Trainer rules regarding Chiropractic Physicians.

Going to page #63. IDAPA 24, Title 03, Chapter 01, Section 600-08-(d) is adding a 60-day deadline to appeal a decision by the Chiropractic Peer Review committee. The current set of rules does not specify a deadline to file for appeals.

Mr. Chair, with that the docket is before you. Do you have any questions? Thank you Mr. Chair for the

opportunity to present these proposed rules to you today.

465 Current CHIA licenses
411 Current ID Address**'**s

(Attachment #4)

RULES PRESENTATION
SENATE HEALTH AND WELFARE COMMITTEE
Wednesday, January 25, 2006

Rule Type:

Pending fee rules of the Board of Nursing
Docket No. 23-0101-0501

Location:

2006 Pending Fee Rule Book Pages 108-111

Action Requested:

Approval of the pending fee rules

Public Response:

The pending rules were published in the Administrative Rules Bulletin and were made available upon request, in hard copy, **from the Board of Nursing. All licensees** were notified of the proposed fee changes through newsletters, flyers and various presentations during 2005. There were no negative comments received relative to these pending rules.

Overview:
The rules presented in this docket increase the fees for nurse licensure by two separate processes: 1) for the renewal of licensure for nurses currently licensed in Idaho; and 2) for initial licensure by endorsement of a license issued by another state. The proposed increases affect licensure for licensed practical nurses, registered nurses and advanced practical professional nurses.

As indicated at the top of page 110 in rule 900.01 ,.02 and .03, the fee to renew an Idaho nursing licenée will increase from fifty to ninety dollars. Idaho licenses, once issued, are renewed every two years, with approximately 7,000 nurses renewing licenses in a given year.

As indicated at the top of page 111 in rule 901.03, the fee to endorse a nursing license issued by another state into Idaho will increase from eighty-five to one hundred ten dollars. Approximately 700 nurses are licensed by endorsement in a given year.

Nurse licensure fees were last increased in 2001. The rising cost of managing the work of the Board of Nursing has prompted the need for these proposed fee increases in fees. Rising costs are a direct result of increased workload related to processing fingerprint-based criminal background checks and investigating and prosecuting increasingly complex disciplinary cases, among other processes. In addition, the costs of purchasing and maintaining equipment and software to support the Board**'**s licensure database and verification systems continues to increase as do operational costs associated with travel, printing and communication.

The Board of Nursing is a self-supporting agency, with 97% of revenue generated through fees for licensure. Despite judicious management of the Board**'**s budget, over the past several years the Board**'**s expenses have exceeded revenue resulting in an erosion of the agency**'**s fund balance.

Thank you for your approval of the proposed fee rules which are necessary to support the Board of Nursing in its mission to safeguard the public.

(Attachment #5)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 26, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:05 p.m.

GUBER-NATORIAL APPOINTMENT: **Senator Compton** reminded the committee of the gubernatorial appointment of **Donald Gross** to the State Board of Health and Welfare and of Mr. Gross' appearance before the committee on January 25.

Senator Darrington recommended that Senator Broadsword make the motion, since she is from the same part of the state as Mr. Gross. The Senator explained the reasoning behind his January 25 suggestion to Mr. Gross to read the Idaho Code because Board members often do not understand their duties, authority, and responsibilities according to the code.

MOTION: **Senator Broadsword** endorsed the approval of Mr. Gross's appointment and offered to carry the appointment on the floor with **Senator Compton**. **Senator Werk** seconded the motion. The motion carried by **voice vote.**

MINUTES: **Senator Broadsword** moved that the minutes for January 19 be approved. **Senator Werk** seconded the motion. The motion was approved through a **voice vote**.

Vice Chairman Broadsword assumed the Chair for rules review.

OVERVIEW **John Sandoval, Chief of Staff, Department of Environmental Quality,** gave some brief introductory remarks on the rules on the agenda. He said 20 rules were promulgated this year, which is more than usual because it has been an unusual year. Five rules were required by legislation passed last year, four rules resulted from changes in federal law, seven rules came at the request of external entities, and four rules were initiated by the Department. All stakeholders in each rule were involved in its drafting, and the rules have been open to the public for comment.

RULE # 58-0105-0501: **Orville Green, Administrator for Waste Management and Mediation, Department of Environmental Quality,** presented **Rule 58-0105-0501, Rules and Standards for Hazardous Waste** (Pending). This rule is the routine, annual update to the hazardous waste regulations. It is necessary to maintain primacy and authorization from the EPA for the Department to operate its program in lieu of the EPA. It is not more stringent than federal regulation. The only change to the rule is a change in the date. The federal rules added some pigments and dyes to the hazardous waste list but Idaho has no dye or pigment manufacturers so there is no need for an update.

MOTION: **Senator Werk** moved that Docket 58-0105-0501 be accepted. **Senator McGee** seconded the motion.

Senator Darrington referred to Idaho's stringency requirement and asked whether stringency serves the state well.

Orville Green said yes, Idaho is well-served.

Senator Coiner asked how the state takes care of toxins which are excluded from the federal rules.

Orville Green said that, regarding the discovery of a hazardous material not included in the federal rules, the state is allowed to protect public health procedurally. The process includes identifying that the source of contamination is indeed toxic, finding a possible pathway from the source to a person, and to interrupt the pathway once isolated. The Department looks to other states for prototype rules to keep Idaho's rules highly stringent.

Senator Broadsword asked whether naturally-occurring elements are considered hazardous waste.

Orville Green said normally they are not.

Senator Coiner expressed concerns that stringency has the potential to tie the Department's hands.

Orville Green said if there is a chemical threat, the Environmental Protection and Health Act enables the Department to address the issue.

Senator Kelly asked whether stringency rules only apply to situations where there is a federal equivalent to the provisions at issue.

Orville Green said the Senator is correct.

The motion carried by **voice vote**.

RULE # 58-0101-0501:

Martin Bauer, Air Administrator, Department of Environmental Quality, introduced two colleagues who will help present the rules. **Mike Simon, Stationary Source Program Manager,** presented **Rule 58-0101-0501, Rules for the Control of Air Pollution in Idaho** (Pending). His testimony is included as an attachment (Attachment #1). This rule exempts applicable sources from obtaining Tier I permits unless the Environmental Protection Agency (EPA) decides differently. There is no cost to either the regulated community or the Department.

Senator Kelly asked what types of facilities would be exempted.

Mike Simon explained minor facilities, or area sources, would be exempted. These facilities are subject to National Emissions Standards for Hazardous Air Pollutant regulations or new source performance standards. They do not include major facilities.

Senator Kelly asked what types of facilities are included, other than dry-cleaners?

Mike Simon said they include dry-cleaners, chrome electroplating facilities, commercial ethylene oxidize sterilizers, residential wood heaters, etc.

Senator Broadsword asked whether the parties involved were consulted on the rule.

Mike Simon said the Department underwent negotiated rulemaking and many of the industries in Idaho were represented.

MOTION:

Senator Compton moved that Rule 58-0101-0501 be accepted. **Senator Coiner** seconded the motion. The motion carried by **voice vote**.

RULE # 58-0101-0503:

Martin Bauer, Air Administrator, Department of Environmental Quality, presented **Rule 58-0101-0503, Rules for the Control of Air Pollution in Idaho** (Pending). This rule was established by H 230 and S 1228 last year, requiring the Department to adopt rules that define the term “regulated air pollutant” as it applies to various Clean Air Act permitting programs. Two negotiated rule meetings were held and a public comment period resulted in one set of comments. The rule has the potential to save the public money.

Dick Rush, Idaho Association of Commerce and Industry (IACI) lobbyist, testified in support of the rule. IACI supported the legislation last year and worked to incorporate an amendment requested by the EPA in a trailer bill. The EPA suggested a change in rule-making as well, and Mr. Rush’s organization also supported that.

Senator Kelly asked Mr. Bauer about the Idaho Conservation League’s (ICL) comment included in the rule packet. She asked if any changes had been made as a result of the comment.

Martin Bauer directed the committee to the comment in the packet. The ICL was concerned that through the legislation process last year, the state implementation plan process was circumvented relating to the

public's ability to have a say in the rule change with a 30-day notice. A second hearing was held and the concerns were resolved.

MOTION: **Senator McGee** moved that Docket 58-0101-0503 be accepted. **Senator Darrington** seconded. **Senator Werk** requested a roll-call vote be taken. The motion passed 5 ayes to 2 nays.

AYE: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner

NO: Senators Werk, Kelly

Senators Brant and Keough were not present for the vote. The roll-call vote sheet is included as an attachment (Attachment #2).

RULE # 58-0101-0504: **Chris Ramsdell, Monitoring and Emission Inventory Coordinator, Department of Environmental Quality,** presented **Rule 58-0101-0504, Rules for the Control of Air Pollution in Idaho** (Pending). His testimony is included as an attachment (Attachment #3). This rule consolidates two similar data requests DEQ made to the industry regarding emissions, in order to save time and money.

Senator Darrington asked if the Department leaves the option open to use the Web application system or not.

Chris Ramsdell says the option is open. However, if they do not use the Web system, the EPA will come in and estimate the emissions for them.

Senator Kelly asked if the emissions reports are available to the public.

Chris Ramsdell said it is available through the National Emissions Inventory for limited access, but it is not open to the general public at this point in time.

MOTION: **Senator McGee** moved that Docket 58-0101-0504 be accepted. **Senator Compton** seconded the motion. The motion carried by **voice vote**.

RULE # 58-0101-0505: **Martin Bauer** presented **Rule 58-0101-0505, Rules for the Control of Air Pollution in Idaho** (Pending). This rule ensures that the rules governing air pollution in Idaho remain consistent with federal regulations. There was no negotiated rulemaking process, though there was a public comment period and public hearing. No costs are associated with the rule. Originally, the incorporation by reference included the Clear Air Mercury rule pertaining to coal-fire power generation and 600 comments were received. In October, the EPA filed a notice of reconsideration on this controversy and DEQ withdrew that part of the rule. The rule is neither broader in scope nor more stringent than federal rules.

MOTION: **Senator Coiner** move that Rule 58-0101-0505 be approved. **Senator McGee** seconded the motion. The motion carried by **voice vote**.

RULE # 58-0101-0506: **Martin Bauer** presented **Rule 58-0101-0506**, **Rules for the Control of Air Pollution in Idaho** (Pending). The next three rules result from negotiated rulemaking issues which have been broken down into smaller issues. This rule change updates definitions, provides consistent transferability of all permit programs, and adds language allowing permits to construct and Tier Two permits to be transferrable in order to decrease workload for DEQ and the regulated community. The rule should cause a decrease in cost to the regulated community. No comments were received during the comment period and there is no controversy associated with it.

MOTION: **Senator McGee** moved that Rule 58-0101-0506 be accepted. **Senator Compton** seconded the motion. The motion carried by **voice vote**.

RULE # 58-0101-0507: **Martin Bauer** presented **Rule 58-0101-0507**, **Rules for the Control of Air Pollution in Idaho** (Pending). DEQ is proposing to list three exemptions to the Air Permitting exemption criteria, and to clarify two current exemptions, and to delete the Director's Discretionary Exemption. There should be a long-term decrease in costs as a result of the rule. Because there have been no comments, there should be no controversy associated with it. The rule should also make the Department's requirements more consistent with federal rules.

MOTION: **Senator Coiner** moved that Rule 58-0101-0507 be approved. **Senator McGee** seconded the motion. The motion carried by **voice vote**.

RULE # 58-0101-0508: **Mike Simon, Stationary Source Program Manager,** presented **Rule 58-0101-0508, Rules for the Control of Air Pollution in Idaho** (Pending). The sign-in sheet and a memorandum explaining the Emissions Cap is included in the rule packet. This rule establishes voluntary facility-wide emissions limits in pre-construction and operative permits of minor facilities in order to create an efficient and flexible permit. The only comment received was in favor of the rule.

Senator Kelly asked what pollutants would be within the cap.

Mike Simon listed several pollutants. It includes the list of federal hazardous pollutants.

Senator Kelly asked for an example of how it would work both before and after the rule. Discussion ensued.

Senator Kelly asked if Micron would take advantage of the Emissions Cap.

Mike Simon said it would, and Micron representatives were part of the negotiated rulemaking committee.

MOTION: **Senator McGee** moved that Rule 58-0101-0508 be approved. **Senator Coiner** seconded the motion. The motion carried **voice vote**.

DISCUSSION: **Senator Compton** asked each committee member for topics to speak to the Hospital Association about in his speech on January 27. Among the suggestions made were the nursing shortage, the governor's Medicaid reform plan, and infection rates in hospitals.

ADJOURN: There being no further business, the meeting was adjourned at 4:17 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Exemption for Area sOurces from TV Permitting

Intro

Mr. Chairman, members of the Committee, my name is Mike Simon, Stationary Source Program Manager, and I am here to present the Pending Rule to exempt deferred sources from the TV permitting program.

Key Questions to Answer

Why was the rulemaking necessary?

When the Clean Air Act Amendments were enacted in 1990, the rules stated that minor Title V sources (also known as area sources) were required to submit a Tier I operating permit application by June 1, *2005.* DEQ anticipated that the Environmental Protection Agency would have decided whether to permanently exempt these sources from TV by December 2004. The EPA did not make this determination by the deadline, therefore a rule was required to be in place on or before June 1, 2005 in order to address this issue.

What opportunities did we provide for involvement? DEQ held a negotiated rulemaking on March 9 of 2005. DEQ conducted a public comment period which concluded June 2005 and no comments were received. An opportunity for a public hearing was announced, but there were no requests.

Who was involved? Industry, environmental consultants and attorneys, DEQ staff and the Attorney Generals Office.

What is going to be the estimated cost to **the** regulated community, etc? This rulemaking exempts applicable sources from obtaining Tier I permits unless EPA decides differently. There is no cost to either the regulated community or the DEQ.

Stringency Issue? This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations. (Idaho Code 39 107D does not apply).

DETAILS OF THE RULE

This rule allows DEQ to exempt deferred sources from the requirements to obtain Tier I operating permits unless EPA requires a TV permit through federal rulemaking. In December 2005, EPA made a decision to permanently exempt all but one of these minor source categories, s Secondary lead smelting facilities, which there are only 3 in the country, none in Idaho.

1. Perchloroethylene dry cleaners
2. Hard and decorative chromium electroplating and chromium anodizing
3. Halogenated solvent cleaning (halogenated compounds are from group VIIA on periodic table – flourines, chlorine, bromine, iodine)
4. Commercial ethylene oxide sterilization
5. Secondary aluminum production
6. Residential Wood Heaters
7. and Asbestos Demolition. **(Attachment #1)**

Rule Presentation Template – Emissions Reporting Rule (Docket 58-0101-0504)

1) Why was the rulemaking necessary?

- The rule change consolidates two very similar data requests made to industry by DEQ.
- The idea behind the change was to save both DEQ and the facilities time and eliminate confusion between the two projects.
- The rule change also standardizes the data type so DEQ and industry are only using "actual" emissions for all purposes (El, registration, etc.).

2) What opportunities did we provide for involvement?

- Negotiated rulemaking was published in the Admin Bulletin June 1, 2005
- Negotiated rulemaking meeting was held here at DEQ on June 7, 2005
- The negotiations were completed June 27, 2005
- A comment period on the proposed rule change ran from September 7 to October 11, 2005
- A public hearing was held on October 11, 2005

3) Who was involved?

- Members of the regulated community, DEQ personnel, and the public were all welcomed to participate.

4) *What is going to be the estimated cost to the regulated community, etc?*

- No actual increased cost is expected from this rule change.
- The intent is to save both industry and DEQ personnel time and create a savings.
- It is possible that using "actual" emissions rather than estimates or permit limits will decrease Title V fees through increased accuracy of emissions registration.

* DEQ calculated that 6% of Title V emissions registrations last year were based on other than "actual" emissions (i.e., permit limits, etc.); this change might create a decrease in Title V fee collections.

5) What are the controversial issues or contentious elements of the rule?

- A few facilities feel the online Web application reporting may actually increase the personnel hours used to submit required emissions data for Title V reporting and emissions inventories.

6) Stringency issues?

- For data consistency and continuity, the new rule and the DEQ Web application for emissions reporting should both be utilized by all in the regulated community. If any opt out of this reporting method, DEQ will allow EPA to estimate the facility**'**s emissions for that year**'**s inventory project.

(Attachment #3)

DETAILS OF THE RULE

View ofproposed change...

04. Pollutant Registration. The actual emissions from the previous calendar year for oxides of sulfur (SOx), oxides of nitrogen (NOx), particulate matter (PM), and volatile organic compounds (VOC) based on one (1) or more of the following methods chosen by the registrant: (4 2 03)

a. Actual annual emissions; or (4 2 03)

b. An estimate of the actual annual emissions calculated using methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied to the unit*s throughput. actual operating hours, production rates, in-place control equipment, andor the types of materials processed, stored, or combusted during the preceding calendar year; or. (4—2-033Lj

c. Allowable emissions based on permit limitations. (3 19 99)

As it would read after change...

58.01.01.389.04 **Pollutant Registration.** The emissions from the previous calendar year for oxides of sulfur (SOx), oxides of nitrogen, particulate matter (PM), and volatile organic compounds (VOC) calculated using methods to include, but not limited to, continuous emissions monitoring (CEMS), certified source tests, material balances (mass-balance), state/industry emission factors, or AP-42 emission factors applied throughout, actual operating hours, production rates, in-place control equipment, or the types of materials processed, stored, or combusted.

This rule change standardizes and simplifies reporting and data management, which allows for apples-to-apples data comparisons and eliminates confusion between two similar data requests; emissions inventory and emissions registration.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 30, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Brandt

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:03 p.m.

PRESENTATION: **Senator Stegner, Assistant Majority Leader,** updated the committee on the recommendations of the subcommittee for mental health, a subcommittee of the Health Care Task Force. The subcommittee made five recommendations to the Task Force, which were then approved and now will go under consideration by the germane committees in the legislature. The recommendations are as follows:

1. Improve the Early Intervention Service available through public schools by enhancing the Community Resource Worker Program.
2. Provide mental health insurance to state employees to evaluate the cost and effectiveness of the insurance.
3. Increase the number of ACT teams in the state.
4. Develop transitional housing for both adults and juveniles through a community grant system estimated to make $4 million available.
5. Develop psychiatric beds and emergency psychiatric beds through the community grant.

Senator Stegner continued by explaining areas for continued examination in the subcommittee, including: the need for increased state responsibility for the indigent mentally ill, including treatment and facilities for pre-commitment; the need to expand the definition of “seriously mentally ill;” the need to separate housing for the mentally ill from the prison population; the need to improve cooperation between the Department of Health and Welfare, school districts, and the juvenile justice system in early intervention; the need to support an expansion of mental health drug courts; the need to address the lack of secure short-term holding beds; and the need to address who has first-response and financial responsibility in indigent cases.

Senator Compton commended the work of the subcommittee.

PRESENTATION: **Brent Reinke, Director, Idaho Department of Juvenile Corrections,** presented an update on juvenile corrections to the committee. He introduced **Dr. Ryan Hulbert, Clinical Services Administrator,** who will assist in presenting the Department's update. Mr. Reinke then presented a slide show which is included as an attachment (Attachment #1; the Executive Summary is Attachment #2). He announced a 25% decrease in recidivism since 2002. He said of the 170,000 juveniles in Idaho aged 10 to 17, 9.8% were arrested in the last year.

Senator Werk commented that 10% seems like a high percentage of youth to be arrested in just one year. He asked whether multiple arrests for the same individual could account for the high percentage.

Brent Reinke said it could. The 10% statistic comes from the total number of arrests.

Senator Werk commented that the graph may be inaccurate.

Brent Reinke continued his report and discussed the partnerships between the state, the counties, and the courts. Among the emerging trends among Idaho's juvenile population are: a small drop in adjudicated sex offenders; an increase in juveniles with mental health issues and drug and alcohol problems; and an increase in female and very young offenders. Arrests for juveniles committing sexual offenses has increased 26% in the last five years.

Senator Coiner asked whether the number of sex offenses are increasing for if more cases are being reported because sex offenses have been spotlighted in recent years.

Brent Reinke answered that while spotlighting may be a contributing factor, there has, in fact, been an increase in the amount of actual sexual offenses.

Senator Werk asked for clarification on the difference between Serious Emotional Disturbance (SED) and mental health issues when a juvenile is being diagnosed.

Brent Reinke yielded to **Dr. Hulbert** who explained that the term "mental health issue" means having a diagnosed mental problem like depression, ADHD, etc., but not including conduct disorder or substance abuse. SED is more serious.

Brent Reinke concluded by expressing the Department's concern with emerging trends in the population of very young offenders which is increasing. Turnover in staff is also a concern because decreasing recidivism rates is directly linked to decreasing turnover rates among staff.

Senator Compton asked why the turnover rate is high.

Brent Reinke said high turnover has to do with inadequate compensation.

Senator McGee commented that if juveniles with mental health issues were separated and put in a program recommended by the mental health subcommittee, the Department's juvenile population might be reduced by half, based on the statistics in the slide show.

Brent Reinke said that is not really the case.

Dr. Ryan Hulbert said there are only a few juveniles who cannot be handled within the Department's programs.

Senator Kelly asked what kind of budget request the Department needs in order to reach its objective.

Brent Reinke said the Department needs nothing.

Senator Darrington asked about a 36-bed facility in Lewiston which has 12 unused beds, and whether it would be possible to open them, without additional appropriation, if a fund shift was allowed.

Brent Reinke said a fund shift could open the 12 unused beds.

Senator Darrington said fund shifting must come from JFAC and asked whether there would be a problem with a fund shift.

Brent Reinke said there would not.

Senator Compton asked whether anyone within the Department is carrying the idea to JFAC.

Brent Reinke said someone is. He said that although the Department has many needs, he must support the governor's proposal.

Discussion on funding ensued.

Senator Coiner asked the Department to clarify the arrest statistics.

Brent Reinke said he would bring his research analyst to walk committee members through the statistics if they are interested.

RULE # 58-0112-0501:

Vice Chairman Broadsword assumed the Chair for rules review.

Barry Burnell, Administrator, Water Quality Division, Department of Environmental Quality, introduced **Rule 58-0112-0501, Rules for Administration of Water Pollution Control Loans** (Fee Rule) (Temporary Rule). **Bill Jerrel, Loan Program Manager**, presented the rule.

Senator Compton asked whether there was any opposition to the rule.

Barry Burnell said there was not.

Bill Jerrel said this rule relates to the administration of the state revolving fund loan program which is used to provide low-interest loans to

municipalities and other entities to pay for wastewater infrastructure improvements. Since its inception in 1989, the EPA has given the Department an annual capitalization grant, which saves money and funds administrative activity and personnel.

Senator Compton asked whether the fund covers almost the entire cost of administering the program.

Bill Jerrel answered that it does.

Senator Compton asked whether any general funds were being used or requested to fund the program.

Bill Jerrel said no.

MOTION: **Senator Compton** moved that Rule 58-0112-0501 be accepted, commenting that it makes good sense. **Senator McGee** seconded the motion.

Senator Broadsword asked how the Department prioritizes projects.

Bill Jerrel said projects are prioritized based on public health and water quality concerns. The projects are drafted onto a priority list for public review. After a public hearing, the projects are adopted.

Senator Darrington said that the Water Pollution Control Account used to be the fund legislators would draw from before the creation of the Budget Stabilization and Millennium Funds.

The motion carried by a **Voice Vote**.

RULE # 58-0108-0601: **Barry Burnell, Administrator, Water Quality Division,** introduced **Rule 58-0108-0601, Idaho Rules for Public Drinking Water Systems** (Temporary Rule). This rule is called the Point of Use Rule. It addresses chronic pollutants, though not acute pollutants, in drinking water. **Jerri Henry, Enforcement and Rules Coordinator, Drinking Water Program,** presented the rule to the committee. Her testimony is included as an attachment (Attachment #3). "Point of use" means that the water is treated at the tap. This rule provides flexibility for smaller communities.

Senator Broadsword asked whether a point of use device would have to be installed in each home within a community which chooses to use them, or whether a device could be placed at the hook-up or at the treatment plant.

Jerri Henry said a point of use device goes under a kitchen sink. Whole house units are called point of entry devices, and they have to undergo engineering plans and specifications. Centralized treatment treats all water before it goes into the system.

Senator Werk asked if water providers in small communities could install devices under each household's sink if their water does not meet some standard.

Jerri Henry affirmed.

Senator Werk asked whether a device works for every contaminant.

Jerri Henry explained the devices are specifically for chronic contaminants, not for microbial, acute, volatile, or organic contaminants.

Senator Werk asked about the dangers of arsenic in shower water as it is vaporized and inhaled.

Jerri Henry said there have been no studies indicating that arsenic is dangerous when it is inhaled or when it comes in contact with skin.

Senator Kelly asked how the devices can be disposed of.

Jerri Henry said they can be disposed of as household waste. Although there is a concern regarding centralized treatment and the disposal of radioactive waste, it does not concern point of use devices.

Senator Werk asked how water providers can monitor breakthroughs.

Jerri Henry said each device is to be equipped with a light which will warn users if the water is unsafe. Some devices automatically shut off the water supply.

Senator Werk asked if the devices being discussed are the same things sold in stores.

Jerri Henry said yes.

MOTION: **Senator Darrington** moved to approve Rule 58-0108-0601**. Senator Coiner** seconded the motion. The motion carried by a **Voice Vote**.

RULE # 58-0108-0501: **Barry Burnell, Administrator, Water Quality Division,** introduced **Rule 58-0108-0501, Idaho Rules for Public Drinking Water Systems** (Pending). This is the first rule which addresses S 1220 from the 2005 legislative session. S 1220 directed the agency to develop facility and design standards relating to water and wastewater systems. Rules are to be in place by June 2006. **Thomas John, Rules Coordinator, Facility and Design Standards,** presented the rule. His testimony is included as an attachment (Attachment #4).

Thomas John said the rule modifies language for plan and specification review to allow water main extension plans to be approved by licensed professional engineers who represent cities, counties, and water districts; provides definitions that bracket the project types which are eligible for review and approval; and replaces a language reference with actual language.

Senator Broadsword asked why the rules were not modified after public comment was received.

Thomas John said that there were two comments received. One

comment, from the EPA, did not ask for changes or object but went on record to show concern about the Department's ability to ensure that public water systems are designed and constructed in compliance with the Safe Drinking Water Act. The EPA said their concerns cannot be fully evaluated until the rule is implemented. The second comment was of a technical nature from Legislative Services.

Senator Broadsword stated that the purpose behind last year's legislation was to shorten the time to approve a plan. She asked if Mr. John has seen any improvement.

Barry Burnell answered that the number of plans has increased but not as much as it would have, had S 1220 not passed. The engineers work to get plans and specifications approved in 42 days.

Senator Compton asked the same question of **Toni Hardesty, Director, Department of Environmental Quality**.

Toni Hardesty said workload continues to increase for engineers, though not as much as it would without the legislation. Larger cities with high engineering capability are the ones benefitting from the change.

Senator Kelly asked if the Department planned to ask JFAC for permission to charge fees for applications submitted to fund additional staff to aid the workload.

Toni Hardesty said fees are an issue that has just come into conversation in the Department.

Senator Kelly said charging a fee would help growth pay for itself.

Senator Werk concurred, stating that fees are the norm in many states.

MOTION: **Senator Compton** moved to accept Docket 58-0108-0501. **Senator Keough** seconded the motion. The motion carried by a **Voice Vote**.

RULE # 58-0116-0501: **Barry Burnell, Administrator, Water Quality Division,** presented **Rule 58-0116-0501, Wastewater Rules** (Pending). His testimony is included as an attachment (Attachment #5). This rule is a new chapter. It is phase one (year one) of two phases (two years) to implement S 1220. It includes facility and design standards for wastewater collection systems, as well as requirements for plan and specification review, facility plan and preliminary engineering report submittal and review, and the public wastewater system operator licensure requirements. It also incorporates the critical portions of the Wastewater Treatment Requirements by transferring them into this new rule chapter.

Dick Rush, Idaho Association of Commerce and Industry (IACI) lobbyist, testified in support of the rule. He gave a brief history of the legislation process of S 1220 and how it affected IACI.

MOTION: **Senator McGee** moved to approve Rule 58-0116-0501. **Senator Keough** seconded the motion. The motion carried by a **Voice Vote**.

RULE # 58-0102-0504: **Barry Burnell, Administrator, Water Quality Division,** presented **Rule 58-0102-0504, Water Quality Standards and Wastewater Treatment Requirements** (Pending). This rule deletes many sections of the wastewater treatment requirements and moves the deleted sections into the wastewater rules. It is renamed as "Water Quality Standards." (Attachment #6)

MOTION: **Senator Compton** moved to accept Rule 58-0116-0501**. Senator McGee** seconded the motion. The motion carried by a **Voice Vote**.

MINUTES: **Senator Keough** moved to approve the minutes from January 24, 2006 with the suggestions articulated by Senator Werk. **Senator Werk** seconded the motion. The motion carried by a **Voice Vote**.

Senator Coiner moved to approve the minutes from January 25, 2006 with the same caveat. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

Senator Broadsword moved to approve the minutes from January 23, 2006 with the caveat added by Senator Werk. **Senator Keough** seconded the motion. The motion carried by a **Voice Vote**.

Senator Werk moved to approve the minutes from January 18, 2006 with the changes he recommended. **Senator Kelly** seconded the motion. The motion carried by a **Voice Vote**.

ADJOURN: There being no further business, the meeting was adjourned at 4:49 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Point of Use Rule
Docket No. 58-0108-0601
Legislative Talking Points

What is a Point of Use Treatment Device?

A relatively simple, pre-engineered, self-contained treatment unit which is typically installed under a kitchen sink, in lieu of installing central treatment that treats all of the water in the entire distribution system. (Note: Only 1-3% of water in distribution system is ingested)

1. Why was the rulemaking necessary?
   - Legislative mandate to provide flexibility to systems trying to comply with the arsenic rule
   - To ensure that POU treatment alternative is available prior to the revised federal arsenic standard for drinking water becoming effective on January 23, 2006.
   - No rule language existed in IDAPA for using POU and the need to provide rule language for getting POU systems approved — provide certainty
   - Changes to Idaho Code 39-118 defined material modifications, which require plans and specification submittal for POU devices because they are material modifications
   - This rule will allow small systems under 200 connections to use POU without requiring plans and specs
   - Confers immediate benefits to Idaho water systems:
     — Increased flexibility to use POU treatment options rather than centralized treatment
     — Cost savings by waiving plan and spec submittal for small systems

2. What opportunities were provided for involvement?
   - No formal process was used for this rule
   - Limited public involvement was used in the preparation of the POU guidance that preceded the rulemaking but the guidance was determined insufficient to address requirements to get a POU system approved

3. What is going to be the estimated cost to the regulated community, etc.?
   - Cost savings are expected for engineering services and reduced capital costs
   - ~90 systems with arsenic over the MCL of 1Oppb, 77 systems serving under 200 connections as of 1/11/06

4. What are the controversial issues or contentious elements of the rule?
   - Unknown. Feedback we have received is favorable and supportive.

5. Stringency issue?
   - There is no CFR counterpart to adopt by reference.
   - The SDWA language, 42 U.S.C. 300g-l(b) (4) (E) (ii) was used as the guide in developing the rule before you. This federal statute removed the ban on using POU for treatment of some chemicals, such as arsenic. (Attachment #3)

- The Idaho rule does not allow POU for compliance with the nitrate MCL in community systems because of the high risk to infants and it**'**s acute nature (blue baby syndrome)
- The temporary rule is no broader in scope or more stringent that the federal statute. The federal statute requires the water system to *own, operate and maintain* the POU devices in a manner to ensure compliance with the MCL.
- The temp rule clarifies what information is needed from the water system to demonstrate to the primacy agency that POU treatment devices are *owned, operated and maintained* in such a manner to ensure compliance with the MCL. All required information relates to ownership, operation and maintenance.

DETAILS OF TIlE **POU RULE:**

- Provides PWSs flexibility tO use POU for treating some contaminants (arsenic)
- Exempts systems with less than 200 service connections from submitting P&s
- Allows for waivers from P&S submittals for larger systems.
- Provides PWSs with certainty and. clarity regarding what information they must submit to DEQ to demonstrate how their ownership, operation and maintenance of the POU devices will ensure compliance with the MCL.

Idaho Rules for Public Drinking Water Systems Docket No. 58-0108-0501

1. Why was the rulemaking necessary?

SB 1220 altered DEQ authorities in **respect to plan** and specification review. It was necessary to incorporate these statutory changes **into rule** language.

2. What opportunities did we provide for involvement?

As directed by SB **1220, a panel of** licensed engineers was appointed by the Director to assist DEQ in developing a preliminary draft of the rule changes. The draft was then subject to the regular negotiation process.

3. **Who was involved?**

City engineers, private consulting engineers, DEQ water quality engineers, District Health Department, EPA Idaho Operations Office, water utility representatives, and water system operators.

4. **What is going to be the estimated cost to the regulated community, etc?**

None anticipated.

5. What are the controversial issues or contentious elements of the rule?

Negotiations were completed in a single session and **there were no subsequent** comments **by** negotiators or similar interests during the public comment period. EPA remains somewhat concerned about the potential for erosion of DEQ**'**s ability to ensure that public water systems are designed and constructed in a manner that makes them capable of achieving compliance with the Safe Drinking Water Act, as required to maintain state primacy. EPA believes that their concerns cannot be fully evaluated urnil the rule is actually implemented.

6. **Stringency Issue?**

This is not an area regulated by the Federal Government. The standards used in design and construction of public water systems are based on nationally accepted criteria, such as AWWA Standards, the Recommended Standards for Waterworks, and good engineering practice.

DETAILS OF TIlE RULE

1. Modify plan and specification review language to provide for construction approval of plans for water main extensions by licensed qualified professional engineers representing cities, counties, and water districts, as provided in SB 1220.

2. Provide definitions that bracket the project types that are eligible for QLPE review and approval and that clarify the use of guidance.

3. Move language from Recommended Standards for Waterworks Parts 1 (P & S Review) and 8 (Distribution Systems) into rule instead of incorporating by reference. Decisions on what language should be rule and what should be guidance were facilitated by appointed panel of licensed engineers.

(Attachment #4)

Rulemaking Presentation
Docket No. 58-0116-0501
Wastewater Rules

This rulemaking was driven by legislative action.

1. Why was **the rulemaking** necessary?
This rulemaking was necessary to respond in part to the mandate of Senate Bill 1220 which required DEQ to work with an Engineering Committee and stakeholders to develop Facility and Design Standards. Senate Bill 1220 also rewrote Idaho Code 39-118 which necessitated modifying **DEQ** rules on plan and specification review for drinking **water, wastewater** and other waste systems. In addition, DEQ took this opportunity to separate wastewater rules from water quality standards. Prior to this, they were combined as IDAPA *58.01.02*— Water Quality Standards and Wastewater Treatment Requirements. It is now proposed to separate 58.01.02 into *58.01.16* for Wastewater Rules and leave 58.01.02 just for Water Quality Standards.

2. What opportunities did we provide for involvement?
As mandated by SB 1220, **DEQ Director** Hardesty appointed four individuals from the Idaho engineering community to assist DEQ in developing these standards. This committee met on May 16, 2005 to develop a preliminary draft of the wastewater rules. Following that effort, DEQ undertook a negotiated rulemaking effort and held an all-day session on May 21, 2005. This effort was well publicized and several individuals attended. The resulting draft rule from this negotiating group was published for public comment from September 7th to October 5th 2005. Several comments were received.

3. **Who** was involved?
Representatives from Idaho cities, consulting groups, lAd, Hecla Mining, INL, wastewater operators, Idaho Rural Water, and DEQ were all involved in one or more parts of developing or commenting on this rule.

4. **What** is going **to be the estimated cost to the regulated community, etc?**
None.

5. **What are the controversial issues or** contentious elements of the rule?
As presently written, there are no known controversial issues. We had initial controversy in two sections of the proposed rule before our Board.

- Initially the proposed rule applied to all wastewater design facilities, including industry. Remedy was to make the proposed rule changes apply only to municipal systems and to transfer from the Water Quality Standards the existing language that applies to industiy as a new section 401 for non-municipal systems.
- Seepage Testing of Lagoons (Section 493) was opposed by the Cities and lAd. Remedy was to delete this section. (It is not in the pending rule). However, we preserved this issue for a future rulemaking.

6. Stringency Issue?
The federal government does not regulate the items in these rules. The standards used in design and construction of wastewater systems are based on nationally accepted criteria, such as the Recommended Standards for Waterworks, and good engineering practice.

DETAILS OF THE RULE
This is a new rule chapter. It is phase 1 (year 1) of two phases (2 years) of wastewater rulemaking to implement the requirements of SB 1220. This rule includes facility and design standards for wastewater collection systems. It also includes requirements for plan and specification review, facility plan and preliminary engineering report submittal and review, and public wastewater system operator licensure requirements. It also incorporates the critical portions of the "Wastewater Treatment Requirements" from 58.01.02 by transferring them over to this new rule chapter.

(Attachment #5)

Rulemaking Presentation
Docket No. 58-0102-0504
Water Quality Standards and Wastewater Treatment Requirements

This rulemaking was driven by legislative **action.**

1. Why was **the rulemaking necessary?**
This rulemaking was necessary as a result the proposed adoption of the Wastewater Rules **at 58.0 1.16.** The Wastewater Rules incorporated the wastewater treatment requirements that were part of the Water Quality Standards 58.01.02. DEQ decided early on in the rulemaking to clarify the Water Quality Standards and Wastewater Treatment Requirements by deleting the wastewater treatment requirements from this rule. It is now proposed to that Chapter 2 of the DEQ rules will be just for Water Quality Standards and all of the wastewater requirements will be in Chapter 16 (Wastewater Rules).

2. **What** opportunities **did we** provide **for** involvement?
This rule was published for public comment from September $_{7}$th to October $_{5}$th, *2005.* One comment was received. This rulemaking was a companion rule with the Wastewater Rules (Chapter 16).

3. Who was involved?
Representatives from Idaho cities, consulting groups, IACI, Hecla Mining, INL, wastewater operators, Idaho Rural Water, and DEQ were all involved in one or more parts of developing or commenting on this rule.

4. What is **going to be the estimated cost to the regulated community, etc?**
None.

5. **What are the controversial issues or contentious elements of the rule?**
As presently written, there are no known controversial issues. This rulemaking deletes definitions and wastewater treatment requirement sections. These definitions and wastewater treatment requirement sections are moved into the Wastewater Rule.

6. Stringency Issue?
The federal government does not regulate the items in these rules. The revisions included in this rule are not broader in scope, nor more stringent, than federal regulations and do not regulate an activity nor regulated by the federal government.

DETAILS OF THE RULE
This rule deletes portions of the "Wastewater Treatment Requirements" from 58.01.02 and transferring them over to the new rule chapter 16 Wastewater Rules.

- Renames the rule to Water Quality Standards.
- Deletes Point Source Wastewater Treatment Requirements
- Deletes Wastewater operator licensure requirements
- Deletes definitions:
  - Available
  - Biochemical Oxygen demand
  - Collection System
  - Disinfection
  - Fecal coliform
  - Inhibition concentration *25* (IC *25)*
  - Instantaneous concentration
  - Land application
  - License
  - No Observed Adverse Effect Level (NOAEL)
  - No Observed Effect Concentration (NOEC)
  - Operating Personnel
  - Owner of Public Wastewater system
  - Potable Water
  - Primary Treatment
  - Public Wastewater system or wastewater sys
  - Responsible Charge / Operator
  - Saturated Zone
  - Secondary Treatment

(Attachment #6)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: January 31, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:09 p.m. He welcomed visitors and explained that recent negotiations on the assisted living rule have been underway for about three weeks in efforts to overcome differences in opinion. He explained procedure for the hearing, limiting testimony time per person, and he urged guests to limit topical redundancy. **Vice Chairman Broadsword** assumed the Chair.

RULE # 16-0305-0601: **Peggy Cook, Program Manager, Division of Welfare, Department of Health and Welfare,** presented **Rule 16-0305-0601, Rules Governing Eligibility for the Aged, Blind and Disabled** (Temporary). This rule was originally heard by the committee on January 17 and the committee held the rule subject to the call of the Chair, allowing the Department time to compromise with stakeholders. She urged the committee to pass the rule as written, and in February, a temporary rule will put the compromises into action. After the legislative session, the rule will undergo negotiated rulemaking to address the issue in future years.

Senator Broadsword asked if the stakeholders agree with the compromise.

Peggy Cook said they do.

MOTION: **Senator McGee** moved to approve Rule 16-0305-0601. **Senator Werk** seconded the motion. The motion carried by a **Voice Vote**.

RULE # 16-0322-0502: **Randy May, Deputy Administrator, Division of Medicaid, Department of Health and Welfare,** presented **Rule 16-0322-0502, Residential Care or Assisted Living Facilities in Idaho** (Chapter Rewrite) (Pending Fee Rule). His testimony is included as an attachment (Attachment #1). The purpose of the rule is to protect the health, safety, and individual rights of residents in assisted living facilities. The majority of stakeholders in the state were involved in negotiations through representatives from 10 associations. During three public hearings in October, the Department received 230 comments, 110 of which were incorporated into the rules.

At the end of negotiations, eight of the ten groups involved were in support of the rules as written. The rules passed the Board of Health and Welfare unanimously and were approved by the Community Care Council.

Senator Compton asked why the negotiated changes that came about during the last three weeks are not reflected in what the Department is asking the committee to approve now.

Randy May explained that the recent negotiations were based on the rules going forward. He said the Idaho Assisted Living Association (IDALA) intends to oppose them in their entirety.

Senator Compton asked **Bryan Elliott, President, IDALA,** if his association was disregarding the changes made as a result of recent negotiations.

Bryan Elliott said that of the 16 items his association recommended for deletion, four were rejected by other stakeholders. He urged that the deletions go forward nonetheless.

Senator Compton asked whether the negotiations covered any ground and whether the committee had exactly the same rules and concerns in front of them as they did from the start.

Bryan Elliott said his association opposes the rules in their entirety, because through the negotiations, only about 10% of the concerns were dealt with.

Senator Broadsword invited Mr. Elliott to the podium.

Bryan Elliott testified in opposition to the rules. His testimony is included as an attachment (Attachment #2). He expressed concerns that the rules are poorly written and that they may be misinterpreted as they are applied in the field. The rule fails to meet its intent.

Robert Vande Merwe, Executive Director, Idaho Health Care Association, testified that his association supports the rules, although it is not in favor of every section therein. His testimony is included in an attachment (Attachment #3). He said the rules can and should be revised once passed, but that there is little sense in rejecting them at this point. He addressed fire safety and the installation of sprinklers, supporting this part of the rule.

Senator Broadsword asked who the Idaho Health Care Association is.

Robert Vande Merwe said the association represents facilities.

Keith Holloway, CEO, Western Health Care Corporation testified in support of the rule. He said the rule allows facilities with a good record of performance to be surveyed less often, which will allow the Department to devote more time and effort to observing the small percentage of providers that tarnish the reputation of the industry.

Michelle Glasgow, Executive Director, IDALA, testified in opposition. Her testimony is included as an attachment (Attachment #4). She expressed concerns about how the rule addresses the frequency of nurse assessments and the definition of reportable incidents, and she made suggestions for remedy. She requested that the rule be rejected.

Jerry Mitchell, Administrator, Turtle and Crane Assisted Living, testified in opposition. His testimony is included as an attachment (Attachment #5). He expressed frustration with the survey process, and he said the rule is too broad and unclear. He said increased paperwork and hiring a registered nurse will price small facilities out of the business.

Joe Gallegos, Associate State Director, AARP-Idaho, testified in support. He said the rule protects residents and should be adopted.

Jim Baugh, Executive Director, Comprehensive Advocacy, Inc. (Co-Ad), testified in support. He said that although the rule may be imperfect, the process of negotiation produced a good set of rules. As with any rule this large, it requires compromise, and the issues can be worked out without rejecting the whole set.

Cathy Hart, Idaho State Ombudsman for the Elderly, Idaho Commission on Aging, testified in support. Her testimony is included as an attachment (Attachment #6). In light of ombudsman investigations last year, she said the rule would help to protect the health, safety, and individual rights of residents in assisted living facilities. She expressed commitment to work out the issues which remain, should the rule pass.

Grant Burgoyne, Attorney, IDALA, testified in opposition. He said that even proponents of the rule think it needs to be fixed. The language is difficult to understand which could lead to variations in interpretations in the survey process.

Patricia Shepherd, daughter of an individual in an assisted living facility, testified on the benefits of care in assisted living facilities and expressed concerns about the rule's cost burden.

Mark Stephenson, management representative, Gables Assisted Living, testified in opposition. He expressed concern about the requirements for behavior management as laid out in the rule. With these requirements, a facility would need to hire a behavior specialist, he said.

Shauna Warner, Administrator, Gables Assisted Living, testified in opposition. She said the rules cause confusion about how they are to be implemented. They increase paperwork, phone calls to the Department, and the need for nurses, which in-turn increases costs. Because of increased costs, Medicaid residents may be asked to leave.

Jody Dalley, Director of Nursing, Gables Assisted Living, testified in opposition. The rule would require registered nurses to implement every order, which may exclude licensed practical nurses from employment.

Kelly Buckland, Director, Idaho State Independent Living Council, testified in support of the rules with one exception. Paragraph 13 in

section 250 runs contrary to Fair Housing Laws and the Americans with Disabilities Act.

Leslie Erfurth, caregiver, Amber Lane and Ivy Place facilities, testified in opposition. She said the paperwork demands would require extra personnel, which could price facilities out of the business.

Therese Sackos, Owner/Operator, Amber Lane and Ivy Place, testified in opposition. The cost of installing a sprinkler system is beyond the financial capability of her facility, she said, especially since she already has a sophisticated smoke detector system. She estimates the rule will increase her costs by $82,600 per year, per home. As this cost is transferred to the residents, it would increase costs to $860 per resident, per month. In order to make up for Medicaid residents, it would increase costs to $1,150 per resident, per month. Her figures are included in an attachment (Attachment #7).

Scott Burpee, CEO, Valley Vista Care Corporation, testified in support of the rule. He pointed out that the compromises have happened and the majority has come to a consensus. The dissent here is a continuation of that debate. Rejecting the rules may give advocates the impression that their input is secondary to the providers. He said he does not see cost increases happening as a result of the rule.

Jim Bruce, husband of individual (now deceased) that had lived in an assisted living facility, testified in opposition. He expressed concerns about costs increasing with the implementation of the rule. He said increasing regulations decreases the quality of care.

Senator Darrington requested that the chairman ask that no one in the room to react to any testimony in any way by any person at any time.

Senator Broadsword concurred.

Pat Rowley, Administrator, Elegant Assisted Living, testified in opposition. He expressed concerns about the increased costs of hiring a nurse to implement all medication changes for residents.

Tom Sass, representing the Leisure Care Corporation, testified in opposition. He expressed concerns that section 220 dictates how business transactions should be done. He said business decisions should not be governed by rule.

Marilyn Sword, Executive Director, Idaho Council on Developmental Disabilities, testified in support. Her testimony is included as an attachment (Attachment #8). As a member of the negotiation committee, the council had several areas of concern opposite from most testimony: they feared that the Department was backing away from responsibility. The council's concern about changing surveys from yearly to once every two years was ameliorated by the ability the Department would have to focus on facilities which need the most help. The rule includes positive additions to resident rights. She recommended a clarification to section 250.16.

Bill Shobe, Operator, B&B Residential Care, testified in opposition. He expressed concerns that additional paperwork will take time away from the time he can spend with his residents.

Sherry Marshall, Vice President, Idaho Assisted Living Nurses Association, testified in opposition. Her concerns dealt with lack of clarity and omissions in the definitions section of the rule. No definition of "behavior" is included and the definition of "resident choice" is unclear. She said tuberculosis testing should not be struck from the rules.

Lisa Cain, Administrator, Emerson House, said that throughout the public hearing process, the Department made honest efforts to address the issues. She supported the rules with a few caveats, such as expanding the definition of "licensed nurse" to include licensed practical nurses, professional nurses, and advanced practice nurses. This would help to keep costs low and encourage hiring nurses. Her testimony is included as an attachment (Attachment #9).

Brad Scutter, resident, Plantation Assisted Living, testified in opposition, saying that the rules may be too restrictive and detailed.

Jim Shadduck, Administrator, Ashley Manor, testified that although his organization rejects the rules, it would accept them with a few deletions and modifications. The section which addresses enforcement remedy for civil money penalties is more severe than nursing home rules, he said.

Senator Compton called **Bryan Elliott** and **Randy May** forward for questions. He asked Mr. Elliott how the $82,000 estimate to hire a nurse came to be.

Bryan Elliott said it is based on a case study aligned with an interpretation of the intent behind the rule.

Senator Compton asked Mr. May what the Department estimates nurse costs to be.

Randy May said the Department believes that the reduction in the requirement of a monthly nursing inspection to once per quarter – or eight assessments per year – will save the industry more than $2 million. Further, the Department does not think a nurse needs to be on-site for every new-order implementation, but can instead use documented delegation.

Senator Compton asked for an explanation of delegation.

Randy May gave an example and explained that when a patient changes medications, an LPN can delegate according to certain parameters.

Senator Compton noted that should these rules be rejected, the old ones will stay in place. He asked if the old rules were well-liked.

Bryan Elliott said they were not and the whole idea behind the new statute was to make the rules satisfactory.

Senator Brandt requested that section numbers in the rule be given for each issue discussed. He asked what section the nursing provision is in.

The committee was directed to section 300.02.

Senator Compton said the nurse is only required to visit every 90 days. He asked how it can be interpreted as requiring a full-time nurse.

Bryan Elliott said that a nurse is also required to visit every time a resident changes condition. A nurse would have to be on-call at all times.

Senator McGee asked what constitutes a change in condition.

Bryan Elliott said it can be weight loss, increased disorientation, etc.

Senator Broadsword asked whether the Department erred on the disability portion of the rule.

Randy May said the Department erred and intends to make remedy. He gave a brief history of how that part of the rule came to be.

Senator Broadsword asked why, if the rule has been in place since 1991, people are upset about it at this point.

Randy May said it was a constant source of irritation and this was an opportunity to fix it.

Senator Compton asked for the list of items the Department agreed to change or delete in recent negotiations.

Randy May listed several.

Senator Compton asked Mr. Elliott whether he told his association about these compromises.

Bryan Elliott said he had not had time.

Senator Werk noted that the concerns about menu changes, etc., are already in existing rule and therefore cannot be changed at this meeting. He asked why the focus of many concerns heard was in existing rule and not part of the changes to the rule.

Randy May explained that it is an entire rewrite, and that should the proposed rule die, the old rule stands.

Senator McGee asked Mr. Elliott why sprinklers should not be required at assisted living facilities when they are required at so many other public places. Is price the only factor?

Bryan Elliott agreed with the importance of sprinklers, but noted that there are other ways to protect the public from fire, especially if an effective evacuation plan is demonstrated and practiced at small facilities.

Randy May said there are currently 73 facilities without sprinklers, all of

which are small facilities. Of those, 28 were grandfathered in. The rule requires that if a facility serves Level 3 individuals – those who need extensive assistance in mobility – they are not subject to the sprinkler requirement, as of a 1993 grandfather clause. Now, 14 years later, sprinklers are needed for all facilities because comatose patients and residents who have recently undergone surgery may live there and be unable to self-evacuate.

Senator Darrington asked IDALA if there are places within the rule that run contrary to the statute, or is there simply a difference in philosophical interpretation. He explained that in order to reject a rule, there needs to be an indication that a rule runs contrary to statute.

Michelle Glasgow said that there are both contradictions with statute and differing philosophical interpretation issues with the rule.

Senator Darrington suggested that since the issue will probably not be resolved in just one meeting, IDALA should locate specific instances wherein the rule fails to conform with the statute.

Michelle Glasgow agreed to do so.

Senator Darrington asked how many stakeholders participated in the seven month negotiation process and how the final vote fell.

Randy May said that of 10 people in the negotiations, seven supported the rule.

Senator Keough said it would be helpful to have a list of the items agreed upon for deletion, and the items agreed to disagree upon.

Michelle Glasgow directed the committee to a binder at their seats and explained its contents. It contains information from recent negotiations.

MOTION: **Chairman Compton** assumed the Chair and decided to hold Docket 16-0322-0502 in abeyance. Further discussion will occur on February 2.

ADJOURN: The meeting was adjourned at 5:08 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

GOOD AFTERNOON MADAM CHAIRMAN, MY NAME IS RANDY MAY. I AM FROM THE MEDICAID DIVISION OF THE DEPARTMENT OF HEALTH AND WELFARE AND I AM HERE TODAY PRESENTING A PROPOSED RULE CHANGE FOR THE COMMITTEE**'**S CONSIDERATION.

THE PROPOSED RULE CHANGE IS DOCKET NUMBER 16-0322-0502 AT TAB 14 IN YOUR BOOK; IT IS TITLED "RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES in IDAHO. (PAUSE) THIS IS A BOARD OF HEALTH AND WELFARE PROMULGATED RULE.

THE PURPOSE OF THE RULE IS TO **PROTECT THE HEALTH, SAFETY,** AND **INDIVIDUAL RIGHTS** OF RESIDENTS RESIDING IN ASSISTED LIVING.

DURING THE 2004 LEGISLATIVE SESSION, THE IDAHO LEGISLATURE PASSED HOUSE CONCURRENT RESOLUTION 49. THAT RESOLUTION TASKED THE DEPARTMENT OF HEALTH AND WELFARE TO "WORK WITH ASSISTED LIVING STAKEHOLDERS, ADVOCATES, AND CLIENTS TO DEVELOP STATUTORY AND RULES CHANGES AS NECESSARY TO ALLOW FOR A TRANSFORMED OVERSIGHT PROCESS IN ASSISTED LIVING.

THE DEPARTMENT CHARTERED AN ASSISTED LIVING RESTRUCTURING ASK FORCE MADE UP OF 12 REPRESENTATIVES FROM THE INDUSTRY, CLIENT ADVOCATES, AND DEPARTMENT STAFF THAT MET THREE HOURS WEEKLY FOR OVER 7 MONTHS TO CAREFULLY NEGOTIATE AND REWRITE IDAHO CODE TITLE 39 CHAPTER 33THAT PORTION OF IDAHO STATUTE WHICH GOVERNS RESIDENTIAL OR ASSISTED LIVING FACILITIES IN IDAHO.

THAT NEW STATUTE WAS PRESENTED TO THE LEGISLATURE IN THE 2005 SESSION AND PASSED BOTH GERMANE COMMITEES AND BOTH CHAMBERS WITH ONLY ONE DISSENTING VOTE.

PASSAGE OF THAT NEW STATUTE LED US TO A SITUATION WHERE WE HAD ADMINISTRATIVE RULES ON THE BOOKS THAT NO LONGER ALIGNED WITH THE NEW STATUTORY GUIDANCE.

FURTHERMORE, THE NEW STATUTE GRANTED THE BOARD OF HEALTH AND WELFARE *THE AUTHORITY TO ADOPT, AMEND, REPEAL, AND ENFORCE SUCH RULES AS MAYBE NECESSARY OR PROPER...TO PROTECT THE HEALTH SAFETY, AND INDIVIDUAL RIGHTS OF RESIDENTS."* THE STATUTE ALSO TASKED THE DEPARTMENT TO CONDUCT NEGOTIATED RULE MAKING TO DEVELOP THOSE RULES.

BEGINNING IN MARCH 2005, THE DEPARTMENT BEGAN NEGOTIATED RULE MAKING WITH INTERESTED STAKEHOLDERS TO BRING ADMINISTRATIVE RULE IN ALIGNMENT WITH THE NEW STATUTE. OVER 50 HOURS OF FORMAL NEGOTIATIONS TOOK PLACE WITH TEN PRINCIPAL GROUPS AT THE TABLE:

- FIVE PROVIDER-BASED GROUPS INCLUDING
  - THE IDAHO ASSISTED LIVING ASSOCIATION REPRESENTING A MAJORITY OF ASSISTED LIVING PROVIDERS IN IDAHO;

(**Attachment #1)**

  - THE IDAHO HEALTH CARE ASSOCIATION-REPRESENTING BOTH ASSISTED LIVING A NURSING HOME FACILITIES IN IDAHO;
    ASHLEY MANOR-A PROVIDER WHO OPERATES 22 SEPARATE FACILITIES IN IDAHO;
  - VALLEY VISTA—A PROVIDER WHO OPERATES FIVE FACILITIES IN IDAHO; AND
    THE IDAHO ASSISTED LIVING NURSES ASSOCIATION
- WE ALSO INCLUDED FOUR ADVOCACY-BASED GROUPS INCLUDING:
  THE OMBUDSMAN FOR THE ELDERLY;
  AARP;

THE DEVELOPMENTAL DISABILITIES COUNCIL;

- COMPREHENSIVE ADVOCACY; AND FINALLY
- THE DEPARTMENT OF HEALTH AND WELFARE

WE ALSO CONSULTED WITH THE BOARD OF NURSING, THE BOARD OF PHARMACY AND THE BUREAU OF OCCUPATIONAL LICENSING AS WE DEVELOPED THE RULES.

WE FORMALLY PUBLISHED DRAFT RULES IN EARLY OCTOBER;
CONDUCTED THREE PUBLIC HEARINGS IN COEUR d' ALENE, BOISE, AND POCATELLO; CAREFULLY CONSIDERED BOTH THE WRITTEN AND ORAL TESTIMONY, AND ACTUALLY INCORPORATED OVER 110 OF THE COMMENTS INTO THE RULES YOU SEE PRESENTED TODAY. AT THE CONCLUSION OF THE NEGOTIATIONS; PUBLIC HEARINGS; AND MODIFICATION OF THE RULES—EIGHT OF THE TEN GROUPS MENTIONED EARLIER SUPPORTED THE NEW RULES AS WRITTEN.

I AM SURE YOU WILL HEAR FROM THOSE GROUPS AS YOU RECEIVE TESTIMONY TODAY.

THESE PROPOSED RULES PASSED THE BOARD OF HEALTH AND WELFARE BY A UNANIMOUS VOTE.

THEY WERE ALSO APPROVED BY THE COMMUNITY CARE COUNCIL—A GROUP ESTABLISHED IN STATUTE TO MAKE POLICY RECOMMENDATIONS TO THE DEPARTMENT AND TO REVIEW AND COMMENT ON PROPOSED RULES CHANGES—THESE RULES PASSED ON A 7-TO-4 VOTE.

MISTER CHAIRMAN, I STAND HERE TODAY TO REPORT THAT THE DEPARTMENT HAS COMPLIED WITH THE GUIDANCE TN HCR 049 AND THE STATUTORY GUIDANCE PROVIDED LAST SESSION. WE HAVE—IN NEGOTIATION AND PARTNERSHIP WITH STAKEHOLDERS—PRODUCED RULES WE BELIEVE WILL HELP PROTECT THE HEALTH, SAFETY, AND INDIVIDUAL RIGHTS OF RESIDENTS.

I WOULD MOVE THAT THE RULES AT DOCKET 16-0322-0502 BE ADOPTED AS FINAL.

I WILL BE HAPPY TO STAND FOR QUESTIONS.

January 31, 2006

Senator Broadsword, members of the committee, my name is Bryan Elliott. I am the president of the Idaho Assisted Living Association, an organization that represents about *75%* of the assisted living providers and families in Idaho. I am also administrator of Willow Park Assisted Living, a community with 124 licensed beds for assisted living and memory care program. I am in opposition to the Rules as proposed.

In just this past week I have spent approximately 20 plus hours in negotiations with Randy May and others of the Department of Health and Welfare. I think that there is one thing that we can agree on and that is the intent of the department and the providers is the same. We both seek to provide great care for our residents, and to establish guidelines that would capture individuals or providers who do not share this same vision. As we interacted through the negotiations, the question that I continually presented was "What was the intent of this rule?" When explained to me, I would understand the intent and in almost every situation, agree with the intent. Then I would ask the question, "Does this rule meet that intent?" We would present various scenarios and situations and discuss possible interpretations and implications of the rule as worded. What became obvious to me is that rules intended to 'cast a net***** to catch those intend to side-step the regulations, has been cast it so widely that it will create a 'dam***** of paper work and requirements for those who do a great job and fully intend to provide great care.

For example, the rule 460 Food Preparation and Service 02 Frequency of Meals c. "The facility must assure that residents who are not in the facility for the noon meal are offered a substantial evening meals; and".

I agree with the intent, but the rule *is* so prescriptive as to not take into consideration that the individual may have been at lunch with their family at the local smorgasbord and could not possibly eat a 'substantial meal*****. While this might be easily addressed on the level of mutual understanding, it is exactly simple issues like this that cause difficulties in the field.

My opposition is two-fold. One is that the rules are poorly written and I think that in several areas this was even agreed to by the department. Secondly, there is the fear of how these rules will be interpreted in the field as individuals other than myself or Randy May, who have not had the opportunity to dialogue over the intent, attempt to comply with or enforce these rules. For this reason I oppose the rules as written. I stand for questions.

Sincerely,

Bryan Elliott
President
Idaho Assisted Living Association

(ATTACHMENT #2)

1/31/06
Madam. Chairman, my name is Robert Vande Merwe. I am the Executive Director of the Idaho Health Care Association.

The Idaho Health Care Association represents approximately ten percent of Idaho**'**s assisted living facilities. We were part of a restructuring committee which was charged with re-writing the assisted living statute and rules over the last 18 months. We are not in favor of every section of the rules and have seen a lot of compromise, however, we are generally in favor of the proposed rules. We were not in favor of every portion of the statute which passed last year either, but we supported the last minute compromise that created the current assisted living statute.

These rules are not SNF**'**s vs. AL**'**s! They were accepted as written by the Advisory group created by last year**'**s legislature and again accepted by the oversight committee-we agreed to have some sections removed.

Now, opponents of these rules would like to not only have you reject these rules, but go back and re-do last year**'**s statute.

One of the most important sections of the rules before you relates to fire safety. It requires a facility to have a sprinkler system if they care for patients who cannot safely self evacuate. (see rule 152.05.6)

IDALA**'**s attorney wrote...

> "This rule may require sprinklers in those facilities which have residents who cannot self-evacuate. Is there any evidence that any resident in Idaho has ever been harmed by the absence of sprinklers?"

The USA today has documented many assisted living residents across the country who were killed because the facility was not sprinklered. I was an AL administrator for just two years and I am aware of 80 residents who were protected by sprinklers. Story... I certainly do not want to wait until a fire with multiple deaths occurs in an Idaho assisted living facility for these rules to pass.

The majority of assisted living facilities in Idaho are excellent, safe facilities that strive to provide high quality care. It is common sense to ONLY care for residents who CAN safely self-evacuate IF the facility is NOT sprinklered! It is not an SNF vs. AL issue. I believe it is common sense.
There are many other sections of the rules which I believe are common sense, but I am out of time.
I stand for questions

(Attachment #3)

Senator Broadsword, members of the committee, my name is Michelle Glasgow. I represent the Idaho Assisted Living Association, an organization that represents about *75%* of the assisted living providers in Idaho.

We could spend hours discussing why the rule negotiations did or didn*****t work, who didn*****t play fair, and we could share horror stories of what happened in an assisted living community in Hoboken, Idaho. But our purpose here today is not to throw stones; it is to discuss whether or not the proposed rules meet the needs of assisted living residents and providers in Idaho. I hope in my testimony today that I may dispel a few rumors, point out a few places that the proposed assisted living rule really meets the needs of residents in Idaho and discuss our concerns with much of the proposed rule.

Let me first give you an example of a proposed rule that works, which epitomized all we wanted to do throughout the rule.

300. REQUIREMENTS FOR NURSING SERVICES.
01. Licensed Professional Nurse (RN). States that: A licensed professional nurse (RN) must visit the facility at least every ninety (90) days or when there is a change in the resident*****s condition. The licensed professional nurse is responsible for delegation of all nursing functions, according to IDAPA 23.01 .01, "Idaho Board ofNursing Rules," Section 400. ( )(**).** Present rule states that a nurse must be in the facility at least once every month with no caveat for change in condition. Present rule was measurable, but prescriptive. It just didn*****t meet the needs of individual residents.

The proposed rule allows providers to adapt the timing of the nursing assessment to meet the needs of the residence. This proposed rule will not, necessarily result in a cost savings. A healthy, stable resident living in assisted living will only have to bear the cost of an assessment once every 90 days. However, because of the way this rule is written, a resident in the more advanced stages of Alzheimer*****s may be required to receive a nursing assessment weekly or more often as the resident*****s condition changes. This rule is written to allow the nursing assessment to meet the unique needs of an individual while providing parameters for the timing of the assessment.

Now let me give you an example of a rule that doesn*****t work so well. The 011. DEFINITIONS AND ABBREVIATIONS F THROUGH M. 10. Incident, Reportable, provides a laundry list of types of incidents that should be reported to the Bureau of Facility Standards within 24 hours. The intent is to allow the Department to investigate incidents the violate statute or rule at the time of an incident and not many months after the incident during a regular survey. Some of these items in the list of reportable incidents look like they might be good suggestions. However, the proposed rule misses the mark. The definition of a reportable incident includes many incidents that do not necessarily violate rule or statute and omit many incidents that would violate rule or statute. As an example, if a family member strikes a resident with a purse in the common area, but no serious injury occurs, it does not come under the present laundry list definition of a reportable incident. The injury would not be of unknown origin. The provider would know how it happened. It would not involve facility sponsored transportation. There would obviously be no elopement and unless the resident was hit hard there would be no trip to the emergency room to report, or dialysis, or death. It is not a reportable incident by definition, but this incident would definitely violate a resident*****s right to freedom from abuse and come under statute and rule. Inversely, if a resident in a wheel chair accidentally runs into another resident and causes a minor scrape on the resident*****s foot, the incident must be reported to the department even though it is obvious r~ that no rule or statute has been violated. If we want rule that points to incidents that violate rule or statute, then a simple rule, "Any incident that indicates a violation of Idaho statute or rule shall be reported to the Bureau of Facility Standards within 24 hours of the incident," would have hit the mark. It would set the parameters and provide guidance for determining what really is a reportable incident.

(Attachment #4)

Unfortunately most of the added proposed rules are like my second example and miss the mark, miss the intent of the statute and the rule and simply add prescriptive rules, documentation and expenses to the cost of care for these residents. A few are even more damaging, removing resident choice and requiring all residents to live under the same expensive, restrictive environment of those residents requiring the most care. In your packet is a list of 1 74 section or subsections of rule we feel miss that mark, increase expenses, and do little to improve the actual care of the resident. We have spent several days and long hours negotiating with the Department to try to find ways to salvage the proposed rules. By my count, after much discussion there were only 11 sections or subsections of rule we could agree to delete, 26 sections or subsections that would have to be clarified with informational letters, 23 sections or subsections of rules that would go into post session negotiations with stake holders and 39 issues the we could not reach a conclusion on for lack of additional information. Many issues were left unresolved. In addition, IDALA agreed to drop our issues with many of the rules that had confusing language or simply bad grammar but were still workable. Unfortunately, if all of these changes were agreed upon and had positive conclusions, we would still have a set of rules that are substantially more expensive to implement and enforce, are still, in many instances, badly written and we would be back here next year recommending extensive changes to assisted living rule.

Though only one of our many cost issues, I am aware that everyone is on pins and needles over the sprinkler issues. At last count, over seventy assisted living communities in Idaho, almost *25%,* do not presently have approved sprinkler systems. 46 of those facilities have almost exclusively Medicaid residents. They are facilities that can never generate enough revenue to pay for a sophisticated sprinkler system. These communities have been receiving bids on retrofitted sprinkler systems and prices range from $23,000 to $30,000 depending on their needs and geographic location. These providers also represent the majority of assisted living facilities in Idaho that serve the mentally ill and the developmentally disabled. Should proposed rule be put into place, we estimate that over *450* residents will be displaced, most ofwhich will be the mentally ill and the developmentally disabled. Many would have to go into a higher, more expensive kind of care. One residence without a sprinkler system admits residents whose only alternative is the one of the State Hospitals. This facility receives an average $ 81 per day per resident including the RUF. Transfer to the State Hospital would increase this cost to an average $380 per day, a cost far greater to the state than the cost of the sprinkler installation. Cost to transfer residents from this facility to a state hospital would be over $100,000 per year per resident or $1,500,000 ($300,000 in state general funds) annually. In just a few years, additional cost to the state from this one facility alone would be enough to install sprinklers in all the facilities requiring a retrofitted sprinkler system.

The Department states that these rules are already in place in present rule. If that is the case, then they have failed to follow state rule for many years. If present rule is the same or stricter than proposed rule, then why have many of these buildings been licensed and then regularly inspected, with no deficiencies or enforcement action in regard to the lack of a fire suppression system? Whether or not these buildings have been grandfathered in the past or not, the precedent indicates there was at least a tacit agreement between the Department and the providers. We are only asking the agreement continue.

Let me conclude by reminding the committee of a seldom cited piece in assisted living statute.

39-3304. TYPES OF FACILITIES. The state will foster the development of, and provide incentives for, residential care or assisted living facilities serving specific mentally ill and developmentally or physically disabled populations which are small in size to provide for family and homelike arrangements. Small facilities of eight (8) beds or less for individuals with developmental or physical disabilities or dementia and fifteen (15) beds or less for individual with mental illness will provide residents with the opportunity for normalized and integrated living in typical homes in neighborhoods and communities.

I am not aware of any incentives provided, to date, for smaller facilities. Many of the proposed rules not only do not meet the intent of this piece of statute, but actually make in much harder for them to stay in the business of assisted living. In addition to sprinklers, there are changes in documentation requirements, nursing services, staff training and more that will be cost prohibitive for small providers. It is not an idle threat when we state that if these proposed assisted living rules go into place, some smaller communities will no longer be in operation. These owners/operators have read the rules, run the numbers and have decided that they will close their doors rather than sell their present buildings and start over again. They love there residents, but under this set proposed rules, they can no longer afford to provide care.

We ask that you reject the proposed assisted living rules as written, so we may sit down together and develop a clean set of rules that develop a system of care that is unique to Idaho, meet the unique needs of assisted living residents and allow providers to operate in an appropriate regulatory environment.

I stand for questions.

Senate Health & Welfare Committee
Hearing on Rules
Tuesday, January 31, 2006

In 1994 my wife and I sold our insurance administration business to start a new career in Assisted Living. We have enjoyed the business of caring for these wonderful grandmas and grandpas with one stark exception. No one warned us about the surveys. The surveys have been an exercise in humiliation, condescending behavior, bulling, disdain and rudeness. With some refreshing exceptions this was our lot during each survey.

Because the rules were new to us it was easy for the surveyor to hold out, what we have since learned, to be creative and outright wrong interpretations of rules.

t has become a goal of mine that our assisted living industry have statute and rules that are clear and unambiguous; where we can be surveyed on how well we care for our residents — or in other words — what is the outcome of our care, **NOT on findin2 a piece of paper that doesn't *say* what the** surveyor thinks **it should say.**

Last year I was fortunate to serve on the Survey Restructuring Committee. For six months we met each Friday here in Boise. The 12 members of this committee discussed, argued and negotiated how Assisted Living should be regulated. The product of that group was basically good. Legislation was written and passed last year and we felt we had a good outcome but our joy was short lived. Once H&W presented their proposed rules I was sick at heart. These proposed rules contain page after page of broad rules that often defy any clear explanation. Much of it is just mischief making on how I should operate my business, a lot of it will deny our residents the right to choose where they can live and how services may be delivered to them in their home.

It is no small cost when we have to now double the hours we need to train each staff person each year or spend extra hours each day just documenting paperwork or bring on a Registered Nurse to oversee all aspects of our work. If you can find a registered nurse one will cost over $84,000 a year with wages and payroll *taxes*, pricy for our small facilities.

(Attachment #5)

On August 19th of last year two surveyors came to one of our homes and in the first five minutes the surveyor demanded that we present our nurse “right now”. I explained that our nurse only does monthly assessments and works a regular job and *is* not available. For the next hour this conversation went back and forth until it became clear that our nurse was not in house and not available. It was a long day for all of us.

If you don**'**t think H&W can again add to or read into these proposed rules enough mischief to jeopardize any facility operation then you perhaps don**'**t know what we know.

We need oversight that is fair and equitable based on clear and definable standards measured by how well we care for our residents, not on how much paper can be generated each day.

Over the past week or so we have spent many hours with the people at H&W to try to identify our “heartburn issues”. I wish it were that *easy*. There are over 60 pages of proposed rules and it is one big heartburn.

I urge you to reject these rules so that we can continue to give care in our home to our residents that consider our home their home.

Jerry Mitchell

3751 Marlene St

Idaho Falls, ID 83406

(208) 529-8112

Cathy Hart
Idaho State Ombudsman for the Elderly
Idaho Commission on Aging
January 31,
2006

Purposed Rules
16-03.22 — Residential Care or Assisted Living Facilities in Idaho
Docket No. 16-0322-0502 (Chapter rewrite)

My name is Cathy Hart. I am the Idaho State Ombudsman for the Elderly with the Idaho Commission on Aging and have been
an Ombudsmans for the Elderly with the Idaho Commission on Again and have been an Ombudsman for nearly 16 years.

The Ombudsman program regulated by federal and state statute, is charged with protecting the health, safety, welfare and rights of residents in Idaho**'**s assisted living homes and nursing homes.

Over the 33 years that the program has been in operation in Idaho we have seen great changes and growth in the type of living arrangements available to those citizens that need additional help.

Certainly many of the residents in assisted living homes are very independent but increasingly we see many who need more and more help. Some have family and friends to help oversee the care they receive and yet many do not.

Assisted living is often marketed as a place where people can live and age in place, never having to move again. While this concept is wonderful and very attractive to most of us, it means that there is a potential for individuals to need increasing care as time goes by and to be less and less able to direct that care.

The purpose of these rules before you today is to protect the health, safety, and individual rights of those residents living in assisted living.

Last year our 7 local ombudsmen investigated approximately 1016 complaints involving assisted living facilities. Admission agreements were not written in an easily ~j **u** understandable manner and residents were evicted without the opportunity to appeal
unfair practices. Medications were given in error or not at all and some resident estates were charged for rent of space after death and after personal items had been removed from the facility because they had failed to submit a written 30-day notice.

At the direction of the Department of Health & Welfare, interested stakeholders met many times and worked very hard to arrive at the proposed rules you see before you. It was a definite lesson in the art of compromise and we all recognize that there will be issues that will need to be readdressed as time goes by and these rules are put to the test. I think it**'**s pretty safe to say that we will be committed to that process just as we were committed to the development of these rules.

I ask that you approve these rules as written. With that I will stand for questions.
(Attachment #6)

Idaho Council on Developmental DisABILITIES

802 West Bannock, Suite 308, Boise, ID 83702-5840
208-334-2178 FAX 208-334-3417 TTY 208-334-2179
1-800-544-2433 • email: icdd@)icdd.state.jd.us
Webpage: http://www.state.id.us/icdd/ January 30, 2006

Senator Dick Compton, Chairman
Senate Health and Welfare Committee
Statehouse
Boise, ID 83720

Re: Rules Docket 16-0322-0502 (Rewrite) and 16-0322-0501 (Repeal) Dear Chairman Compton and Committee

Members:

The Idaho Council on Developmental Disabilities *is* authorized under state and federal law to promote quality in services and supports for Idahoans with developmental disabilities and their families and to monitor plans, policies and services provided by public agencies for people with developmental disabilities. In accordance with this function, the Council offers the following comments with regard to the above referenced rule dockets.

Rule Docket 16-0322-0502 is a substantial rewrite of the rules governing Residential Assisted Living Facilities in Idaho, resulting from legislation passed during the 2005 session. This rewrite was undertaken by the Department of Health and Welfare through the Idaho Board and Care Council, an advisory body representing consumers, advocates, providers and the Department. The Council on Developmental Disabilities serves on the Board and Care Council and participated in the lengthy deliberations that resulted in the rule changes before you today. The discussion, deliberations, debate and decision making that occurred took place over several meetings spanning nearly two years.

The Council had several areas of concern throughout the negotiation process. In particular we were concerned with the move from annual surveys to every three years. But that concern was ameliorated by the fact that by doing this, the Department could focus its monitoring resources on those providers who provided substandard care. These rules also allow for unannounced monitoring visits which we support as a means of maintaining quality services and filling in the gap with surveys every 3 years.

In addition, these rules include several positive additions regarding residents**'** welfare and rights. The definition section has been expanded to include a definition of “core issues” by which the facility will be monitored for compliance. These core issues are fundamental and deal with abuse, neglect, exploitation, safety and

(Attachment #8)

adequacy of care. Language is also added to ensure residents have access to legal advocates.

There is one section that I believe needs clarification by the Department to ensure that all providers are interpreting it as it is intended. This is section 250.16 of the rules which reads:

16. Secure Environment. *If the facility accepts and retains residents who have cognitive impairment, the facility must provide a~ secure interior environment and exterior yard which is secure and safe.*

We all want people to be safe and secure, but it is important that this section not be perceived as keeping people in locked facilities. Security may be provided by less intrusive means such as alarm systems and/or increased staffing. Any restriction of an individual**'**s freedoms must be very carefully weighed and only resorted to if identified as a threat to their health and safety as identified in a comprehensive risk assessment.

In addition to the substance of these rules, I would like to recognize the considerable give and take that occurred throughout the negotiation period. Although no one at the table got everything they argued for, we did work toward what we thought was a reasonable position of consensus. For the most part, the stakeholders agree that consensus was reached and we feel that the rules before you today represent that.

We encourage you to support the considerable work that has been done and approve this docket with clarification of the above referenced section.

Sincere1y,

Marilyn B. Sword
Executive Director

EMERSON
HOUSE

January 3l, 2006

Members of the Senate Health and Welfare Committee:

I wish to thank the Committee for the opportunity to present my concerns about the proposed Assisted Living Rules. I am a Licensed Administrator at Emerson House in Garden City, a 37-bed secure unit specializing in Memory Care. I presented testimony at the October 13 public hearing in Boise on the proposed rules, and I'd like to thank the Department Of Health and Welfare for hearing andacting upon many of the concerns I addressed at that time.

I believe the revised proposed Assisted Living Rules are better than they were in October, but I remain concerned about certain areas.

At Emerson House, we are concerned about the potential impact of Professional Nurse oversight as stipulated in this legislation. To clarify, we are not opposing professional medical oversight, only the impact of the rule as written.

An easy solution is to clearly include Licensed Practical Nurses in the rule by adding a definition of the term, "Licensed Nurse," differentiating it from "Licensed Professional Nurse."

As long as Licensed Practical Nurses work within the scope of their licensure *(under the supervision of a Professional Nurse, Physician or Dentist),* I believe they can and should be utilized in Assisted Living Facilities to provide or supplement nursing coverage. As you know, we face a nursing shortage across the country. That shortage has driven up wages for both RNs and LPNs. The difference between employing an RN or an LPN can be $10 to $1 5/hour or more. By judiciously employing LPNs in Assisted Living, we can contain costs and reduce the impact on an already overtaxed health care system.

According to Judy Nagle, Assistant Director of the Idaho Board of Nursing, the term "Licensed Nurse" as stipulated in IDAPA 23 is intended to include ~ii nurses (Licensed Practical Nurses, Registered or Professional Nurses, and Advanced Practice Nurses). Ms. Nagle went on to say that based on her understanding of that term, she was comfortable with and did not oppose the rules before the legislature this year. To avoid confusion, I believe the terminology should be clearly defined. A proposed definition follows:

011.Definitions F through M.
Licensed Nurse: Any person licensed to practice nursing in the State of Idaho and governed by the Idaho Board of Nursing and IDAPA 23. Licensed Nurses include Professional or Registered Nurses (RN), Licensed Practical Nurses (LPN) **or Advanced Practice Nurses (Nurse Practitioner, etc.).**

(Attachment #9)

Other issues I have with the proposed rules are mostly definitions or wording. These include:

Finally, under #152: Admission Policies. The paragraph in 152.05 is difficult to understand, especially subsection a. Consider the following rewrite:

*.05*Policies of Acceptable Admissions

a.A resident will be admitted or retained only when:

i.The facility has the capability, capacity and services to provide care; and

ii.The facility has personnel, appropriate in number and skills, to care for the resident; or

iii.The facility provides or arranges for additional outside services needed to offer appropriate care.

b.No resident will be admitted or retained who requires care not within the legally licensed authority of the facility unless skilled care is of an intermittent nature and can be safely provided by Home Health or Hospice nurses. The following residents may not be admitted or retained:

1.

11.

iii.A resident who requires physical restraints, including full bed rails... exception would be the use of half bed rails for a hospice patient to provide assistance with maneuverability.

iv. ix.

x.A resident with any type of pressure ulcer or open wound that is not improving biweekly, unless the resident js a hospice patient receiving wound care from a licensed professional nurse.

Thank you for your kind attention.

Respectfully Submitted,

Lisa Cain
Administrator

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 1, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

RS 15405: **Paul Leary, Bureau Chief, Division of Medicaid, Department of Health and Welfare,** introduced **RS 15405, Relating to Certified Family Homes**. His testimony is included as an attachment (Attachment #1). The RS relates to the confidentiality of an individual who files a complaint in the belief that a portion of Title 39 Chapter 35 Idaho code has been violated.

MOTION: **Senator Darrington** moved RS 15405 to print. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

RS 15451: **Leslie Clements, Deputy Administrator, Division of Medicaid,** introduced **RS 15451, Relative to Personal Care Services**. Her testimony is included as an attachment (Attachment #2). The proposed amendment deletes the requirement that personal services be ordered by a physician or authorized provider.

MOTION: **Senator Coiner** moved RS 15451 to print. **Senator Brandt** seconded the motion. The motion carried by a **Voice Vote**.

RS 15406: **Cameron Gilliland, Developmental Disabilities Program Manager, Family and Community Services, Department of Health and Welfare,** introduced **RS 15406, Relating to the Developmentally Disabled**. His testimony is included as an attachment (Attachment #3). The change requested will protect individuals with developmental disabilities by assuring that qualified evaluation committee members are available throughout the state. In some parts of Idaho, Ph.D. level psychologists are difficult to find, so this change will allow psychologists with a master's degree to serve on the evaluation committee.

Senator Werk asked why Ph.D. level psychologists are difficult to find.

Cameron Gilliland said rural regions are having the most difficulty. Pay

is not as much of an issue as finding qualified candidates.

Senator Darrington remarked that the RS aligns Idaho code with present practice.

MOTION: **Senator McGee** moved RS 15406 to print. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

RS 15492C1: **Mary Jones, Program Manager, Infant Toddler Program, Department of Health and Welfare,** introduced **RS 15492C1, Relating to Early Childhood and Early Intervention Services**. Her testimony is included as an attachment (Attachment #4). The RS modifies the advisory responsibilities, organization, and planning functions of the interagency coordination council, but does not change the Department's responsibility and commitment to deliver early intervention to infants and toddlers with developmental delays and disabilities.

Senator Compton asked whether there is any controversy with the RS.

Mary Jones said the Department anticipates no opposition.

Senator Broadsword noted that the RS creates a committee of more than 24 people. She asked whether Ms. Jones has ever found difficulty reaching consensus among a committee that large.

Mary Jones said the current interagency coordinating council has about 23 members, as per federal requirements. The Early Care and Learning Cross-System Task Force is even larger. In combining the two, there will be more than 24 members, but both groups have processes in place which aid in making decisions.

MOTION: **Senator Werk** moved RS 15492C1 to print. **Senator Keough** seconded the motion.

Senator Compton asked what the net impact would be.

Mary Jones said the funds to be used are already established.

The motion carried by a **Voice Vote**.

RS 15416C1: **Dia Gainor, Emergency Medical Services Bureau Chief, Department of Health and Welfare,** introduced **RS 15416C1, Relating to Emergency Medical Services** (EMS). Her testimony is included as an attachment (Attachment #5). This RS would allow three changes to Idaho code: adding to physician oversight of EMS personnel, establishing an EMS physician commission to perform the duties that are currently the responsibility of the state Board of Medicine, and eliminating grandfather rights associated with a prior generation of legislative changes dating back to the 1970s.

Senator Darrington expressed support for the idea because professional jealousies often interfere with good public policy. Still, he noted that the Office of the Governor is overloaded with appointments, and he said the 10 member board proposed in the RS may want to include a legislator

since the board will often come before the legislature.

Dia Gainor said she would take Senator Darrington's suggestions back to the Department for further discussion.

MOTION: **Senator Darrington** moved RS 15416C1 to print. **Senator Werk** seconded the motion. The motion carried by a **Voice Vote**.

RS 15380: **Mike Sheeley, Executive Director, Idaho State Board of Dentistry,** presented **RS 15380, Relating to the Board of Dentistry.** The RS would change the licensing of dental hygienists and dentists from once every year to once every two years, on a rotating basis. No licensing fees would increase due to a cap on those fees. The other medical boards in the state license are on a multiple-year basis.

Senator Broadsword asked whether the same licensing fees will be collected, only instead of $150 every year, $300 every two years.

Mike Sheeley affirmed.

Senator Werk said the provisions in the RS seem overly detailed for a statute, as opposed to a rule which is easier to change and update.

Mike Sheeley said many of the specifics are already in statute and that the Board believes that people are more apt to read statute than rules.

MOTION: **Senator McGee** moved RS 15380 to print. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

DISCUSSION: The committee discussed Rule 16-0322-0502, the chapter rewrite of residential care or assisted living facilities in Idaho, which was heard on January 31. More discussion will be held on February 2.

ADJOURN: There being no further business, the meeting adjourned at 3:58 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Mister Chairman and members of the committee, my name is Paul Leary, I am a Bureau Chief in the Division of Medicaid. This afternoon I would like to present RS *15405* relating to the confidentiality of an individual who files a complaint and who believes that a portion of Title 39 Chapter *35* has been violated. Title 39 Chapter *35* of the Idaho Code relates to the law pertaining to Certified Family Homes.

During the 2005 Legislative session Idaho Code *§39-3556* was inadvertently repealed as part of the repeal and re-write of the Certified Family Home Chapter in Title 39. This section of code protected the identity of an individual filing a complaint against a Certified Family Home with the certifying agency. To protect the Health and Safety of clients in Certified Family Homes the Department encourages individuals to file a complaint if they think that any provision of the law dealing with Certified Family Homes has been violated.

RS *15405* will allow a person that registers a complaint against a CFH to do so and maintain their anonymity if they so choose. There are two additions to current code that are required to be compliant with current law.

The change in Title 39 Chapter *35* reflects language that was inadvertently repealed last year.

The change in Title 9 Chapter 3 is to comply with Idaho Code §9-349 which requires that any statute which is added on or after January 1, 1996 and provides for confidentiality or closure of any public record shall be placed in Chapter 3 of Title 9.

I respectfully ask the committee to move this change in Idaho Code forward. I would be happy

to answer any question.

(Attachment #1)

Good afternoon. Madam Chair, members of the committee, my name is Leslie Clement. I am a deputy administrator with the Division of Medicaid.

This afternoon, Twill be reviewing RS 15451 regarding a proposal to amend Idaho Code 39-5603 which describes the standards for provision of Personal Care Services. Personal care services are services that are designed to help individuals with activities of daily living such as bathing, dressing and eating.

This proposed amendment deletes the requirement that these services be ordered by a physician or authorized provider.

Changes in Federal Regulations, give states the option to authorize Personal Care Services using their own method of assessment and oversight instead of relying on a physician order.

By removing the physician authorization requirement, the process for obtaining needed assistance will be expedited without sacrificing quality. Idaho provides an assessment for medical necessity and oversight through its Regional Medicaid Services staff. The physician order is an additional unnecessary requirement.

Additionally, attendant care services which are essentially the same as personal care services have been offered through a Medicaid Home and Community Base Services Waiver and do not require a physician**'**s order. Our experience since the beginning of the waiver in 1999 has shown that the assessment and oversight provided by Department staff has been successful and more efficient.

I respectfully request you approve the change in statute.

I would be happy to answer any questions you have at this time.

(Attachment #2)

Presentation on RS15406 Relating to the Developmentally Disabled: Psychologists on Evaluations Committees for Guardianship and Commitment

Good Afternoon,

My name is Cameron Gilliland. I am the Developmental Disabilities Program Manager for Family and Community Services. I'm here to encourage you to adapt a change to Idaho Code 66-404 listed as RS1 5406.

The change being requested will protect individuals with developmental disabilities by assuring that qualified developmental disabilities evaluation committee members are available throughout the state.

According to Idaho Code 66-404 when a court is petitioned to determine the guardianship or commitment of an individual with a developmental disability the court directs a committee to evaluate the need and make a report to the court. These committees, called "evaluation committees," have three members; a clinical psychologist, a physician, and social worker. The Department reviews the experience and credentials of perspective committee members before they may serve on evaluation committees. All the regions and the Idaho State School and Hospital have standing evaluation committees.

In recent years the department has been unable to find Ph.D level psychologists willing to serve on our evaluation committees in some parts of Idaho. In those parts of the state the Department has used carefully selected department psychology clinicians with Masters Degrees and experience with individuals with developmental disabilities to fill the psychologist role on evaluation committees. Working in tandem with physicians and social workers on the evaluation committees, Department-appointed clinicians make guardianship and commitment recommendations to Idaho courts. However, these guardianships and commitments could be rejected by the courts, or be otherwise open to challenges based on the current statute which requires the committee use a Ph.D-level psychologist.

Changes to this statute would protect individuals with developmental disabilities by assuring that evaluation committees through the state are qualified and appointed according to Idaho Statute.

Thank you, **(Attachment #3)**

Title 16 Proposed Amendments
Building on a Firm Foundation
Talking Points

Mary Jones

RS 15492C1

History:

1991: The Idaho legislature provided for the provision of early intervention services to infants and toddler experiencing developmental delays or disabilities and their families, and established the Interagency Coordinating Council (ICC) through Title 16, Chapter 1, to meet the requirements of the Individuals with Disabilities Education Act (IDEA).

- 2003: Governor Kempthome established the Early Care and Learning Cross Systems Task Force (ECLCSTF) to develop a comprehensive plan to address identified needs of young children and their families. The ECLCSTF developed a state plan to coordinate services for children, birth through age 8 and their families.
- *2005:* The Interagency Coordinating Council and the Early Care and Learning Cross Systems Task Force propose a merge of the two councils. A unanimous vote of each group declared the desire and intent to form a single council. In combining councils, the proposal adopts the name of Early Childhood Coordinating Council.

This merge will:

- Reduce duplication of service
- Focus resources
- Integrate services for children and families
- Strengthen the supports for all children and their families
- Provide government efficiencies (Total membership reduced by *15* and wih streamline planning and meeting costs.)
- Align the work of two strategic plans

Language changes in Title 16, Chapter 1 will also provide opportunities such as:

- Clarification of governor**'**s designation of budgetary and administrative oversight for the Early Childhood Coordinating Council
- Define early childhood services standards as nationally recognized standards or those promulgated in rule
- Offer a provision for the Early Childhood Coordinating Council to receive funds from any source, public or private
- Integrate planning and other functions such as grant writing, advocacy, and advisory functions
- Provide technical language changes addressing updates to the federal Individuals with Disabilities Act (IDEA).

This legislation modifies the advisory responsibilities, organization and planning functions of the interagency coordination council, but does not change the Department of Health and Welfare**'**s responsibility and commitment to deliver early intervention to infants and toddlers with developmental delays and disabilities and their families.

(Attachment #4)

This RS is the result of diligent work of several EMS physicians, including EMS medical directors from rural and frontier areas in Idaho dating back to late 2003.
Printing this RS would allow three changes to existing Idaho Code to be considered:
physician oversight of EMS personnel, the establishment of an EMS physician commission to perform those duties that are currently the responsibility of the state Board of Medicine, and elimination of grandfather rights associated with a prior generation of legislative changes dating back to the 1970**'**s.

(working backwards through the RS if I may)

1. On page 5, The addition of language clearly outlining the requirement for EMS personnel to have their clinical activities supervised by a physician licensed in Idaho ends a perennial debate that weak language in administrative code fails to resolve today
2. At the bottom of page 4 you**'**ll see the language related to grandfather rights stricken. This allowed vehicles that were being used as ambulances continue to be used when the Legislature first established criteria for regulation of those services
3. Finally, on page 3, the heart of this RS outlines the transfer of authority from the Board of Medicine to an EMS Physician Commission. The duties, which remain unchanged, are to define the allowable scope of practice of EMS providers and set standards for medical direction. The Commission creates a forum for physicians and a consumer member to determine these standards, with each physician member representing a state organization or association (including the Board of Medicine, the Idaho Hospital Association, the Idaho Medical Association, and others) that have a vested interest in the Idaho emergency medical services system. All of the organizations named as having a seat on the Commission have expressed an affirmative interest in or formal support of the legislation. The Board of Medicine voted to remain neutral on the bill if it is introduced.

Printing this bill would allow us questions, Mr. Chairman. to describe the merits of these proposed changes in more detail. With that, I will stand for any questions, Mr. Chairman.

(Attachment #5)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 2, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Kelly

ABSENT/ EXCUSED: Senators Keough, Werk

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:06 p.m.

RULE # 16-0322-0502: The committee discussed Rule 16-0322-0502, **Residential Care or Assisted Living Facilities in Idaho** (Chapter Rewrite) (Pending Fee Rule), for which a hearing was held on January 31. **Senator Compton** noted that if the new rule is not passed, the old rule stands, and many of the concerns voiced at the hearing are in both rules. Because it is a pending fee rule, both the House and the Senate Health and Welfare Committees must approve it in order for it to pass. The House committee was hearing the rule concurrent with this meeting.

Randy May, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, quoted from the statute, to shed light its on the legislative intent. He read from section 39.33.05.

Senator Darrington said the legislative intent is extremely general in nature.

Senator McGee said that in light of the testimony given, he feels comfortable finding common ground on the rule.

Senator Brandt expressed concern about passing the rule as written because once it is in place, motivation for the Department to negotiate to find common ground would diminish. He said he would feel more comfortable passing the rules with the exceptions listed by the Idaho Assisted Living Association (IDALA) (See Attachment #1), then ask the Department to sit with providers and develop temporary rules to take their place.

Senator Broadsword said IDALA is not the only group involved. Several other groups testified that most of the rule was liveable, and they all agreed there were some portions to improve. The recommendations of all groups should be taken into account.

MOTION: **Senator Broadsword** moved to accept Docket 16-0322-0502, excluding the following:

-Page 4, Section 009, 1, 2, 3, 4
-Page 5, Section 011.15
-Page 8, Section 011.28
-Page 11, Section 055. SPECIAL WAIVER
-Page 24, Section 220.e03
-Page 29, Section 250.13
-Page 29, Section 250.14
-Page 31, Section 260.05.b
-Page 42, Section 451.01.b
-Page 53, Section 705.05
-Page 57, Section 730.01.i

The motion includes the intention for the Department to come back to the table for negotiated rulemaking. These are the sections that the Department agreed to remove. The Department included a letter with the changes (See Attachment #2). **Senator Coiner** seconded the motion.

Senator Brandt said that not all entities were involved in the negotiations for the sections which the Department agreed to remove.

Senator Compton asked Mr. May to explain who was involved in the negotiations.

Randy May said the list of exceptions is the product of negotiations between IDALA, six stakeholders from the original negotiations, and himself. The changes were approved by majority vote.

Senator Brandt commented that there were numerous other people who gave testimony on January 31. He said it is a broad-based rule with a lot of gray area.

Senator Broadsword asked Senator Brandt if it was his intention to have all 265 people who have an assisted living facility come to the table and negotiate.

Senator Brandt said that the rule is complicated and large, so the committee must be careful and diligent in reflecting on the effects of some of the rules which will go in affect if it is approved.

Senator Compton asked Senator Brandt if he had compared the Department's letter with the IDALA's list of exceptions.

Senator Brandt said he had.

Senator Darrington said the rule has been difficult to figure out, as far as who is acting in good faith. He expressed concern that the Department brought forth the rules knowing one of the largest affected organizations was in opposition while the other large organization was in total support, and knowing that either of them could rally political opposition at the hearings. He commented that few of the providers who testified referred to specifics in the rule. He said Senator Broadsword's motion may be the

only option at this point.

Senator Broadsword said there were a lot of people who put a lot of time into creating this rule over the past two years. She said she did not want to disregard the dedication, time, and money spent to negotiate it because it might discourage groups from participating in negotiation if they felt it was not productive.

Senator Compton said he feels comfortable that the Department will continue to negotiate with providers, given the efforts it put forward in the past several weeks.

Senator Coiner said when large numbers of people are still upset about a rule after so much negotiation, there must be a disconnect in the process somewhere. The motion on the table will preserve the work already done while still sending a strong message to the Department that there is still plenty of work yet to be done.

Senator Kelly asked whether grandfathering the installment of fire sprinkler systems for facilities currently lacking them should be a health and safety concern.

Senator Compton said the change to the rule is an extension of how long facilities have to install sprinklers, to allow time for small facilities to gather enough funding and to avoid shutting down any facility unduly because of cost. This portion of the rule only applies to facilities which house people who are unable to evacuate themselves, so providers can decide which type of clientele to cater to if they need to minimize costs.

Senator Kelly said that assuming facilities were given another 18 years to comply with the law, the facilities should at least have some effective method of evacuation in place in the event of a fire.

Senator Compton said they are inspected by a local fire marshal.

SUBSTITUTE MOTION:

Senator Brandt moved that Rule 16-0322-0502 be rejected in its entirety. The substitute motion failed for lack of a second.

Senator Darrington referred to a memorandum compiled by **Grant Burgoyne, Attorney, IDALA,** which points out areas that the association feels the rules exceed or are contrary to the statute. This is included as an attachment (Attachment #3). However, in every instance, these are issues which could be litigated fairly from both sides by good lawyers. It is a matter of interpretation. He expressed support for the motion.

A **roll-call vote** was taken and the motion passed 6 ayes to 1 nay. The results are included as an attachment (Attachment #4).

AYE: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Kelly

NAY: Senator Brandt

Senator Compton noted to include several items in the minutes (see

Attachments #4 and #5).

Senator Broadsword commented on the difficulty of the decision and expressed appreciation that the parties have committed to collaborate.

RULE # 16-0322-0501: **Rule 16-0322-0501, Residential Care or Assisted Living Facilities in Idaho** (Chapter Repeal) - (Pending Fee Rule), was the next item on the agenda.

MOTION: **Senator Coiner** moved to accept Docket 16-0322-0501. **Senator McGee** seconded the motion. The motion carried by a **voice vote.**

MINUTES: **Senator Kelly** moved that the minutes of January 17, 2006 be approved as corrected. **Senator McGee** seconded the motion. The motion carried by a **Voice Vote**.

Senator McGee moved that the minutes of January 26, 2006 be approved as corrected. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

DISCUSSION: **Senator Compton** appointed **Senators Broadsword** and **Kelly** to be the committee's liaisons with the Department in the next stage of negotiation.

Randy May said the Department would gladly provide updates to the assigned senators. He thanked **Senators Compton** and **Broadsword** for their work in facilitating recent negotiations.

Senator Broadsword announced the conclusion of rules review for the session and asked the secretary to prepare a letter for the ProTem to that effect.

Senator Compton commended **Senator Broadsword** for conducting the rules review. **Senator Broadsword** complimented the committee.

ADJOURN: There being no further business, the meeting adjourned at 3:45 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

IDALA Issues With Proposed Rule

0.002 nonsensical with recent change
0.003 no outline promised informal dispute resolution process
0.004 unavailability of incorporation documents
0.007 inclusion makes criminal background permanent, not a pilot
0.10 0.02 definition too broad, accidents also potential incidents
0.14 Requires all residents with behaviors to increase skills
0.18 Hard to tell at what level a complaint becomes formal and should be acted upon
0.11 0.07 deals with concepts outside of immediate danger
0.08 definition makes paperwork a core issue
0.09 makes a potential incident equal to an actual incident
0.1 onerous and unnecessary as these incidents are reported to other agencies
0.15 pierces corporate veil without due process, conflicts with statute definition
0.18 disallows doctors from giving meds
0.19 disallows nurses from assisting with meds
0.21 forgot to include physician, authorized provider def. does not include doctors
0.25 requires facilities to sustain health and life and with hospice, Als don t do that
0.28 word does not appear anywhere in the rule
0.12 0.2 decision made by nurse that should be made by the physician
0.55 deals with exempted facilities, broader than actual statute
100 0.06 no indication of what is considered a significant change
0.07 not acceptable with present definition of licensee
105 0.02 not acceptable to extend expensive licensure process for department convenience
.04b administrator issue, should be in Bureau of Occupational License rule
130 0.02 expands investigations to reportable incident. High cost to department
152 0.05 nurses state the limitations should be more carefully defined. Too cofusing
153 0.01 doesn t say what it means, poorly written, hard to understand
0.02 requires staff to assure safety in unsafe situations. That really doesn t make sense
0.08 with present definitions of accident and incident, impossible to comply
215 restricts adminstrator to one facility, approval for more per department, but no guidelines a~
0.09 goes to definition of reportable incidents
0.1 requires administrator to be reachable 24/7, no break for vacation
220 0.01 not practical, short notification of hospital discharge makes this very hard to accomplish
0.02 maintaining self-help skills not possible in persons with chronic, degenerative condition
0.03 confusing to residents and consumers. Only appropriate for facilities declaring specialty
0.OSiv very confusing language
0.O8vii very confusing language
0.02 no public list of CFHs available, will agree to if Dept. provides list
0.03 resident should be able to appeal decision of surveyors
225 plan appropriate for state hospitals with clinical psychiatrists, not assisted living providers, **C**
250 13 violates resident choice
14 violates resident choice
16 violates resident s right to a least restrictive environment
17 Department claims these rules are not retroactive, yet this rule has a)an 1 2006 start date
18 Not clear as to whether or not it includes private kitchens in resident apartment
255 0.03 Restricts resident choice of where to live
0.04 Restricts resident choice of where to live
260 .Olc If applicable needs to be added
0.02 no guidelines as to what does or does not meet department approval
.02b does not allow for storage of resident items, ie Christmas decorations
0.05 not practical in large facilities, a facility with 100 residents would need 300 sets of sheets
300 0.02 though department disagrees, language requires an on-call nurse to implement dr. orders
305 0.02 there are 4 different pieces of paper, all called drs. Orders. Not indication of which this mea
0.04 recommendations should be made to physician, not appropriate for administrator
0.05 again recommendation should be made to physician
310 0.01 disallows new technologies such as OPUS
.01c onerous, Dept could not give one example of “warm” medication being an issue
0.04 Decision should be made by physician and not by facility
320 no justification for a written interim plan between admission agreement and NSA

(Attachment #1)

330 Resident care records new concept, removing idea of documentation by exception
0.04 Not physically possible to be in compliance in combination with rule #,04, .06
350 0.04 Fussy definition of complaint makes it hard to determine which need investigation and writte
0.07 Problem because of definition of reportable incident
400 all sections here are retroactive to Jan 1, 2006 though the department contends these rules
404 incorporation document no longer available through NFPA
0.02 No one that we have talked to can figure out what this means
0.03 We are not sure if this includes resident oxygen. Dept has not gotten back to us on this one
0.06 too broad, not necessary for all populations ie a pond in the back yard
415 0.06 There is no guidance for the requirements of a fire watch, though the dept has a plan verbalt
430 0.05 Many persons want services listed billed separately for tax purposes
451 0.01 Disallows home economist, dept. can t seem to remember reason
0.Olb No one really knows what this means, Virginia stated she wouldn t know how to survey to th
.Olc Seasonal selections is antiquated concept
0.02 snacks, in some cases, should not be offered to those with eating disorders
0.02b standardized recipes difficult in small facilities
455 should store for emergency, but not necessarily to planned menu, impossible for those cate
0.02a should say offer, if resident refuses then the facility wouldn t “provide”
.02b should say offer, resident may choose not to eat breakfast, may fast for religious reasons
.02c residents often with family for whole day. Facility offering meal could be confusing or upset
0.04 disallows disposable items in food service, conflicting with rule that requires disposable glove
510 requires facilities to protect from abuse even when they are not under the supervision of the
515 requires facility to protect from exploitation even when they are not under the supervision 01
520 requires facility to protect for inadequate care even when they are not under the supervision
525 requires facility to protect from neglect even when they are not under the supervision of the
550 requires facility to protect resident rights even when they are not under the supervision of t~
12.d.i residents really don t like this one, feels like they are being “tattled” on
12.d.ii overly prescriptive. Sometimes resident refuse one time for good reason, like not wanting tc
600 0.06 someone besides the administrator should be allowed to schedule personnel
625 doubled orientation training time. Third longest training time in all 50 states
0.02 if staff is not allowed to work unsupervised until trained, why does the Dept. care how long i
0.03 may conflict with Board of Nursing required training for UAPs. Not yet received clarification
630 institutes specialty training with out the other components of a specialty program recommen
only Washington state has specialty training requirements, this is overkill
640 0.01 We want to know if this means facilities have to hire trained staff until their staff is trained.
0.02 staff required to be trained to all new policies and procedures, no exception given for wheth
700 seems reasonable until you realize under new rules, it relates to every medication given
0.02 can t be done and be guaranteed to be safe from fire, flood, or theft
0.05 hard to do without invading resident privacy ie going through their shopping bags to get list
0.08 difficult as some have automatic transfer, family pays bills, not resident, but requires reside
710 0.08 written, signed interim plan onerous, time intensive and not necessary
711 0.02 no indication of severity, a facility may have 15 complaints of the way dinner was fixed in on
0.04 We should not have to inform physician of every refusal of care. The doctor does not want t refuses a bath or a hair appointment, but the rule requires it as written
0.08 onerous documentation, not required in the past. This is most expensive part of new docum
.OSb disallows documentation by exception, a practice acceptable in all states
.08c again should we be documenting and reporting all refusal of care and facilities response or **jL**
.08d documented calls to physician should only be for care issues, not setting appointments, etc.
0.14 facility seldom knows about the disposition of resident property. Family issue
730.Olbin addition to job descriptions and responsibilities, the facility will have to enter a purpose ml
.Oldlicenses and verification and contract nurses should be the responsibility of the nurse agenc~
9000.01This sentence does not even make sense. We don t like to make an issue of grammar, but t
.03dno time for Dept. to provide a follow-up survey, enforcement action could be in force for mo
.04eno time for Dept. to provide a follow-up survey, enforcement action could be in force for mo
.05eno time for Dept. to provide a follow-up survey, enforcement action could be in force for mo
920no time for Dept. to provide a follow-up survey, enforcement action could be in force for mo
925maximum fines not equitable. Maximums for a 5 bed facility is the same as a 50 bed facility
930notification of timelines, clearance from Dept director removed in proposed rule, interferes ~
0.03Facility has no control over who is chosen for temp management, yet there is no provision tc
0.04Provider has no provision, except a request to remove temporary manager if the manager **if**
0.04a Proposed rule removes requirement that temp manager periodically report progress to depat

.04b Present rule stated temp management liable for gross negligence, etc. Proposed rule only sa This person has complete control of the business. Bonding requirement also removed is prof

0.07 maybe a hypothetical issue, but with no periodic reporting, it would be hard to prove a need

940 proposed definition of substantial compliance opens this up to selective enforcement. Scary j,k,l,n o,p With the proposed definition of licensee, license could be revoked if 5% owner had a misdert

IIDAHO DEPARTMENT OF I **HEALTH & WELFARE**

DIRK KEMPTHORNE – GovernorDIVISION OF MEDICAID
KARL B. KURTZ – DirectorDAVID A. ROGERS —Administrator
3232 Elder Street
P.O. Box 83720
Boise, Idaho 83720-0036
PHONE: (208) 334-5747
FAX: (208) 364-1811

February 2, 2006

Chainnan Richard Compton
Idaho Senate, Health and Welfare Committee
Idaho State Legislature
State Capitol Building
P.O. Box 83720
Boise, ID 83720-0081

Dear Chairman Compton:

The Department of Health and Welfare would like to amend our proposal of Rule Docket 16-0322-0502, Residential Care or Assisted Living Facilities in Idaho to reflect the following changes and commitments:

1. We propose to delete the text in red at attachment 1. These changes were negotiated with leadership from the Idaho Assisted Living Association.

2. The Department commits to promulgating a temporary rule, at the first window of opportunity, to modif~r the requirement at Section 152, Admissions Policies; paragraph *5.* Policies of Acceptable Admissions; subparagraph g.

   The text current reads: "Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with NFPA Standard #101. "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability."

   The Department will, through negotiated rule making, promulgate a new temporary rule that extends the present "grandfathering clause" for existing facilities licensed prior to July 1, 1992. That extension will have a date certain sunset of July 1, 2010. The intent of this rule will be that effective July 1, 2010, all facilities accepting residents incapable of self evacuation will have a sprinkler system installed.

(Attachment #2)

3. The Department also commits to help identify financial assistance programs to help assisted living providers fund and install the required sprinkler systems. This assistance could include grants, low-interest loan programs, and/or other financial programs.

The Department appreciates the Committee**'**s willingness to work with interested stakeholders to help protect the health and safety of Idaho citizens.

Sincerely,

Randy
Deputy Administrator
Idaho Medicaid

RM/nm
Attachment

Final Agreed to Deletions
Based on Stakeholder Input

Page 4, Section 009. CRIMINAL **HISTORY** AND **BACKGROUND** CHECKS.

1. Compliance With Department Criminal History and Background Checks. Residential Care or Assisted Living Facilities must comply with IDAPA *16.05.05,* "Criminal History and Background Checks in Long Term **Care Settings".** ()
2. Direct Patient Access Individuals. These rules apply to employees and contractors hired **or contracted** with after October **1,** *2005,* that have direct patient access to residents in Residential Care **or Assisted Living Facilities.** ()
3. Fees **for Criminal History and Background Chocks.** Fees for the criminal history **and background** checks **are paid through the** Federal **Pilot Project** grant **as provided in Public** Law **108-173, Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2~)O3, from October 1,** *2005* through **September 30, 2007, or until federal funding is-no** longer **available.** ()
04. Availability to Work. Any direct **patient** access **individual hired or contracted with on or after October 1, 2005, must complete a self-declaration form before having access to residents. If a designated crime listed in** IDAPA *16.05.06,* **"Rules Governing Mandatory Criminal History Checks," is** disclosed, the individual cannot have access to any resident without a clearance by **the Department. Once the** notarized **self-declaration is completed the individual can only work** under supervision until the individual has **been fingerprinted. The individual must have the fingerprinting** completed within twenty (20) days of completion of the self-declaration. ()

Rationale:
Statute being presented in legislature this year. Statute includes sunset clause not available when rules drafted. Statute will trump rule.

DEFINITIONS:

Page *7,* Section **011.15 Licensee. The business and all owners with more** than five percent *(5%)* of the assets. ()

Rationale: Conflicts with definition in statute—also inconsistent with guidance in other parts of **the rule.**

Page 8, Section 011.28. Non-Repudiation. The ability to ensure **assure** that a party **to a communication cannot deny the authenticity of his or** her signature **on a document or the sending of a message** that **he or she originated.f-~Q**

Rationale: Not used anywhere **else in the document.**

Page 11, Section *055.* SPECIAL WAWER.

The Department may grant a special waiver of the requirement for licensure as a residential care or assisted living facility when it is deemed in the best interests of individuals, residents, and with due consideration of the criteria as specified in Section *39-3354A,* Idaho **Code.** ()

Rationale: Covered in statute; no need to repeat in rule.

220. REQUIREMENTS **FOR** ADMISSION AGREEMENTS.

01. Admission Agreements. Prior to, or on the day of, admission, the facility and each resident or the resident*****s legal guardian or conservator will enter into a written admission agreement that is understandable and translated into a language the resident or his representative understands. The agreement must be signed by all involved parties. The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement and admission agreement are met. Admission agreements must include~-all items described under Subsections 220.01 through 220.14 of these rules. ***~LJ***

aOl. Services Provided. Services the facility provides including: room, board, assistance with activities of daily living, supervision, assistance and monitoring of medications, laundering of linens owned by the facility, coordination of outside services, arrangement for routine, urgent, and emergency medical and dental services, emergency interventions, housekeeping services, maintenance, utilities, access to basic television in common areas, maintenance of self-help skills, recreational activities, and provisions for trips to social functions~.j-)(j

bO. Staffing. Staffing patterns and qualification of staff on duty during a normal day~.f

3Q

Page 24, Section 220. eO~. Notification of Populations Served. The facility must notify potential residents of the types of populations it specializes in serving~.j-)~

d04. Notification of Liability Insurance Coverage. The administrator of a residential care or assisted living facility must disclose in writing at the time of admission or before a resident*****s admission if the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance all residents must be notified of the change in writingj..~-)(j

Rationale: Disconnect in rule; title says '~Notification of Populations Served"—text says "types of populations it specializes in serving". Needs further clarification and context.

250. REQUIREMENTS **FOR** BUILDING CONSTRUCTION AND PHYSICAL STANDARDS.

Page 29, Section 250.13. **Residents Required to Go Outside.** Residents requiring the use of wheelchairs, walkers, or assistance with ambulation cannot be admitted to a facility that requires residents to go outside to go back and for the from the dining room and recreation areas.

Rationale: Restricts resident choice.

Page 29, Section 250.14. **Covered Cement Walks. For facilities** licensed after July 1, 1991, where residents are required to go outside to another building for dining and recreation, there must be covered paved walks from one (1) building to the other.

Rationale: Places undue restriction on provider. Other avenues open to meet the intent of the rule.

260. REQUIREMENTS **FOR** ENVIRONMENTAL **SANITATION.**

Page 31, Section 260.05.b. Linen and Laundry Facilities and Services.()
a. The facility must have available at all times a quantity of linen essential to the proper care and comfort of residents; ()
b. There must be at least two (2) complete changes of clean bed linen and two (2) sets of towels on hand for each licensed bed; ()
c. Linen must be of good quality, not thread-bare, torn or badly stained;()
d. Linens must be handled, processed and stored in a appropriate manner that prevents contamination;()
e. Adequate facilities must be provided for the proper and sanitary washing and drying of linen and other washable goods laundered in the facility; ()
f. The laundry must be situated in an area separate and apart from where food is stored, prepared or served;
g. The laundry must be well lighted and ventilated, adequate in size for the needs of the facility, maintained in a sanitary manner and kept in good repair; ()
h. When the facility sends linen and personal laundry out for laundry services, care must be taken that soiled linen and clothing are properly handled before sending out. Clean linen and clothing received from a laundry service must be stored in a proper manner; and ()
i. Residents**'** and personnel**'**s personal laundry must be collected, transported, sorted, washed, and dried in a sanitary manner and cannot be washed with general linens (towels, sheets). ()

Rationale: Requirement in red deleted—it is too prescriptive. Licensure and survey will focus on outcomes under item a.

451. MENU PLANNING

01.
Menu. The facility must have a menu planned or approved, signed and dated by a registered dietitian prior to being served to the resident. The planned menu must meet nutritional standards.

a. Menus will provide a sufficient variety of foods in adequate amounts at each meal. **Page 42, Section 451.01.b.**

Menus must be different for the same days each week and adjusted

for seasonal changes.
c. Food selections must include foods that are served in the community, in season, as well as residents**'** preferences, food habits, and physical abilities.

d. The menus must be prepared in advance and available to residents on request.

e. The facility must serve the planned menu and if substitutions are made the menu must be corrected.

Rationale: Overly prescriptive. If the residents of the facility enjoy "Tuesday night meatloaf***** as a regular part of the menu; the facility should have the right to meet resident choice. If the residents are not happy with a recurring menu, they can work the issue through a resident*****s council or discussions with the facility. The guidance at 451.01 .a requires variety of foods.

705. RESIDENT BUSINESS RECORDS.

Page 53, Section 705.05. Personal Property Inventory. An inventory of all of the resident*****s personal items. ()

Rationale: Impossible to keep current inventory of all resident personal items (consumables; new purchases; Christmas presents, etc.)

730. FACILITY ADMINISTRATIVE RECORDS **FOR PERSONNEL** AND STAFFING.

Page 57, Section 730.01.i. Documentation by the licensed professional nurse regarding assessment;

Rationale: Incomplete sentence; does not identify what the licensed professional nurse is supposed to assess.

MEMORANDUM

TO: Michelle Glasgow

FROM: Grant T. Burgoyne

DATE: February 1,2006

RE: **Rules Exceeding Scope of DHW Rule Making Authority**

M&B File No.: *05-6397-B*

This memorandum is for the purpose of responding to Senator Darrington**'**s request that IDALA provide a list of DHW**'**s new rules exceeding the scope of its rule making authority. It is understood that this memorandum is intended to be forwarded to members of the Legislature and others, and is not intended to be privileged or otherwise confidential.

The following is a list of examples as time has not permitted a comprehensive list of all rules exceeding DHW**'**s rule making authority.

"Accidents," "Incidents" and "Exploitation." The Idaho Residential Care or Assisted Living Act, Idaho Code Sections 39-330 1, *et seq.* (the "Act") does not requires assisted living facilities to meet impossible standards, and Idaho Code Section 39-3305 does not authorize DHW to impose impossible standards on facilities. The rules relating to "accidents," "incidents" and "exploitation" are so overly broad that they exceed DHW**'**s rule making authority. The rules define "accident" to include any "unintended event that ***can*** cause a resident injury" (emphasis added; Rule 010.02). The rules define "incident" to include any "event that ***can*** cause a resident injury" (emphasis added; Rule 011.09). Under these definitions, virtually anything is an "accident" or "incident" because virtually anything ***can*** cause an injury. "Exploitation" is defined as "[the misuse of a resident**'**s funds, property, resources, identity or person for profit or advantage" (Rule 010.29) and is not in way limited to actions by the facility (Rule *515).* It therefore includes misuse of a resident**'**s funds, property or resources by his/her family, guardians, conservators and other third parties over whom the facility has no actual or legal control. These rules, because oft heir impossible standards, p lace facilities in perpetual noncompliance. DHW**'**s rule making authority does not extend to making facilities responsible for the acts of third parties over whom they have no practical or legal control.

Rules lnvading the Practice of Medicine and Other Professions. The Act, including Idaho Code Section 39-3305, does not authorize DHW to require facilities to make medical and other professional judgments that invade the practice of medicine and other licensed professions. Rule 225 requires facilities to "identify and evaluate behavioral systems," thereby impermissibly intruding on the practice of medicine and/or other licensed professions. Rule 225.02 requires facilities to use the "least restrictive" intervention methods with respect to behavioral systems. Facilities are not, however, legally able to disobey the orders of physicians or others licensed and authorized by law to make judgments regarding such interventions. Rule 225.03 purports to require facilities to evaluate their residents**'** medication needs for the treatment of behavioral

(Attachment #3)

symptoms and assure that such medications are "necessary and at the lowest possible dose." Again, such judgments are for physicians and other licensed professionals. Rule 3 1 0.04.a, .c and .d require facilities to monitor residents "to determine" continued medication needs. This rule also invades the licensed practice of medicine. It is for physicians and other appropriately licensed professionals to make such determinations. Facilities cannot comply with these rules without violating he statutes and rules governing the medical professions. T he rules exceed DHW's rule making authority.

Residents' Privacy Rights. Idaho Code Section 39-3316(2) states that "[e]ach resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups."Idaho Code Section 29-3316(7)(a) requires facilities to permit "[I] immediate access to any resident by any representative of the department, by the state ombudsman for the elderly or his designees, or by the resident individual physician." This latter statutory provision does not, however, operate to require a resident, who does not wish to do so, to submit to an interview by the department. It only requires that the facility not stand in the way of such an interview if the resident consents. Nonetheless, Rule 130.05 provides, in pertinent part, that "[a] surveyor has the authority to interview any … residents, residents' families … or physician … Assisted living residents, their families and their physicians are entitled to refuse such government intrusions, just like all other citizens, unless such interviews are conducted pursuant to the protections afforded by a valid subpoena process. This rule therefore exceeds DHW's rule making authority. Rule *5 50* purports to list all residents' rights. The rule omits the right to privacy contained in Idaho Code Section 39-3316(2). Although Idaho Code Section 39-3305 specifically sets forth the areas in which DHW may promulgate rules, the area of resident rights is not listed, and Idaho Code Section 39-3316 is a comprehensive and exhaustive listing of resident rights and needs no further elaboration in the rules. In purporting to remove the right to privacy in its rules, DHW has exceeded its rule making authority. Rule 711.04 requires facilities to notify "the resident's physician or authorized provider" if the resident refuses care or services. Such notification, if not desired by the resident, violates his/her statutory right to privacy enumerated in Idaho Code Section 39-3316(2). The same holds true for Rule 711 .08.a. These rules exceed DHW's rule making authority.

Resident's Personal Possessions. Idaho Code Section 39-3316(4) provides that "[e]ach resident shall have the right to … [r]etain and use his/her own personal property in his own living area so as to maintain individuality and personal dignity." Rule 430 prohibits a resident from using his or her own bed and is indirect conflict with this statutory right. Rule 705.05 requires facilities to inventory all of their residents' personal items and is in direct conflict with the residents' statutory right of privacy. These rules exceed DHW's rule making authority.

Resident Citizenship Rights. As written, Rule 550.21 states that "[e]ach resident has a right to b e encouraged and assisted to exercise ***rights as a citizens,*** including the right to b e informed and to vote." (Emphasis added.) The rule is not limited to the exercise of rights as a citizen of the United States. Thus it will require facilities to "encourage and assist" residents who are not citizens of the United States in the exercise of their rights as citizens of other countries. This is not a trivial matter, as the programs of the Mexican government, the Iraqi government and other foreign governments to encourage and facilitate the voting of their citizens

who reside in the United States in their country's own elections is well known. As written, the rule will require facilities to encourage and assist residents in exercising their rights as citizens of foreign countries. Nothing in the Act authorized DHW to impose such unreasonable burdens on facilities. This rule exceeds DHW's rule making authority.

Single Use Items. With respect to food service, Rule 460.04 states that "[t]he facility will not use single use items except in unusual circumstances for a short period of time or for outdoor outings." This rule will prohibit facilities from using disposable food service gloves even though their use is required by the food safety code. Idaho Code Section 39-33 16(3)(a)(iii) states that residents have "[t]he right to a safe and sanitary living environment." Idaho Code Section 39-3305 permits DHW to adopt rules to protect health and safety, but it does not permit it to adopt rules that have the opposite effect and make food service less healthful and less safe. By prohibiting the use of disposable food service gloves, facility food service will be less healthful and less safe. Furthermore, this rule will prohibit the use of disposable garbage bags, paper towels, wax paper, aluminum foil, plastic wrap and many other items necessary to the safe and healthful preparation of food in facility kitchens. This rule is directly contrary to the Act and exceeds DHW's rule making authority.

Diet. Idaho Code Section 39-3316(3)(a)(i) provides that residents have "[tjhe right to a diet which is consistent with any religious restriction[]." Rule 460.02.a and .b state that facilities "must provide residents at least three (3) meals daily and that "[t]here must not be more than fourteen (14) hours between a substantial evening meal and breakfast." The rule does not say that the facility is only required to "offer" such meals. The rule is specific in requiring the provision of such meals and violates the statutory right of residents to fast for religious reasons if they so choose. Idaho Code Section 39-3316(3)(a)(ii) also gives residents "[t]he right to refuse a restricted diet." Idaho Code Section 39-330 1 states, among other things, that the purpose of the Act is to provide for a "homelike living arrangement." Rule 460.01 states that "[floods must be prepared by methods that conserve nutritional value This serves to restrict residents from receiving the homelike foods they enjoy such as french fries, apple fritters, potato chips and fruit pies. The rule is contrary to the Act and these two rules exceed DHW's rule making authority.

Licensees. Rule 011.15 defines "licensee" as "[t]he business and all owners with more than five percent *(5%)* of the assets." The enforcement rules render owners personally liable for deficiencies. Such personal liability raises issues under Article XI, Section 17 of the Idaho Constitution, the statutory law and the case law which serve to protect corporate shareholders, and the owners of similar entities such as LLC's, from personal liability. Rules purporting to make shareholders personally liable for corporate financial obligations exceed DHW's rule making authority.

Heating Pads **and Electric Blankets. Rules** 012.05 and 415.05.f prohibit residents from using their own heating pads and electric blankets without a doctor's order. These rules are in direct contradiction to the right of residents under Idaho Code Section 39-33 16(4)(c) to "[r]etain and ***use*** [their] own personal property. . "(Emphasis added.) Where the statute is clear that the resident may use his/her own personal property, DHW's attempt to require that the resident receive his/her doctor's permission to do so exceeds its rule making authority.

Temporary Managers. The rules permit DHW to appoint temporary managers to run deficient facilities. Rule 930.04.b purports to limit temporary manager liability to "gross, willful or wanton negligence, intentional acts and omissions, unexplained short falls in the facility's funds, and breaches of fiduciary duty" while shielding them from acts of ordinary negligence, breach of contract, and violations of tax and other statutes. Nothing in the Act authorizes DHW to protect temporary mangers from the liabilities imposed on them by the other laws of this state. This rule exceeds DHW's rule making authority.

Termination of Admission Agreements. The Act specifically recognizes that facilities are entitled to be paid for the services, housing and other items provided to residents. *See* Idaho Code Section 39-3313 ("[t]he admission agreement shall clearly outline who is financially responsible for resident charges …"); Idaho Code Section *39-3315(2)(a)* (specifically recognizing the right of the facility to discharge a resident for his/her "failure to pay." Rule 221 provides that the admission agreement cannot be terminated unless all of the conditions stated in subparts "a" through "g" are met. This is because the word "and" appears following the semicolon in subpart f. This use of the word "and," rather than the word "or," means that the admission agreement cannot be terminated in the event of a resident's death, unless the facility has given the resident thirty calendar days written notice of the death. Although subpart "e" purports to allow the facility to terminate the admission agreement for non-payment of fees, it is inoperative as long as the resident is alive, because of the requirement in subpart "b" that the resident be dead. Neither can the admission agreement be terminated when emergency conditions require transfer for the resident's protection, or when the resident is no longer statutorily eligible to reside in the facility, because of the Rule's requirement to give the resident thirty days notice of such emergencies. The rule contradicts the statutory right of facilities to be paid and to discharge residents for failure to pay, and exceeds DHW's rule making authority.

Staff Training. Rule 630 begins by stating that "a facility admitting ***and*** retaining residents with diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury must train staff to meet the specialized needs of these residents." (Emphasis added.) As written, a facility that does not admit residents with such diagnoses, but merely retains them after such diagnoses are given, has no obligation to train staff to meet these resident's specialized needs. Consequently, the rule is contrary to the requirement in Idaho Code Section 39-3305(1) that DHW's rules "protect the health [and] safety … of residents …" To have a rule protecting the health and safety of such residents will require that the word "and" be changed to "or" so that "a facility admitting ***or*** retaining residents with [such] diagnoses … must train staff to meet the specialized needs of these residents." This will require any facility having residents with such diagnoses to have appropriately trained staff and such a rule will then be consistent with, rather than contrary to, the Act. As written, the rule makes residents less safe, rather than more safe and, therefore, exceeds DHW's rule making authority.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 6, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:02 p.m.

GUBER-NATORIAL APPOINTMENT: **Daniel Fuchs** of Twin Falls, Idaho, was reappointed by the governor to the **State Board of Health and Welfare** to serve a term commencing January 1, 2006 and expiring January 1, 2009. He is a pharmacist by trade and said his background in pharmacy will aid the Board because of the changes to Medicare Part D and other changes on both the federal and state levels.

Senator Compton asked what Mr. Fuchs sees as the Board's role.

Daniel Fuchs spoke of the importance of the Board in the appeals process. He said it is a good double-check system.

Senator Coiner expressed support for Mr. Fuchs' appointment.

Senator Compton said it is the committee's custom to vote on appointments the meeting following the hearing.

GUBER-NATORIAL APPOINTMENT: **Larry Vincent** of Culdesac, Idaho was appointed by the governor to the **State Board of Health and Welfare** to serve a term commencing January 11, 2006 and expiring January 7, 2009. He has served as a legislator and a commissioner, and although his experience with Health and Welfare is limited, he said he is confident in his ability to learn.

Senator Darrington asked for Mr. Vincent's pledge to read the portion of Idaho Code which outlines the responsibilities and structure of the Board.

Senator Stegner visited the committee to voice support of Mr. Vincent.

Senator Compton said the vote on the appointments will be taken on February 7.

PRESENTATION: The **U.S. Ecology and American Ecology Corporation** gave a

presentation to the committee on the Grandview, Idaho Facility. **Roy Eiguren, Attorney and Lobbyist, U.S. Ecology of Idaho**, presented a slide show (copies of the slides were bound in booklets and are filed with the original minutes). He discussed the federal and state regulations on hazardous waste management and when these regulations came about.

Steve Romano, President and CEO of American Ecology, continued the slide show with an overview of the corporation, including its financial status and the locations of its facilities.

Simon Bell, **Vice President of Hazardous Waste Operations, American Ecology,** continued the slide show with a description of the Grandview, Idaho site and its treatment facilities, including its treatment bin and two recent investments: a new disposal cell and paving Simco Road. He announced that the corporation recently became the second company in Idaho to receive the Occupation Safety and Health Administration (OSHA) award.

Senator Darrington asked about Polychlorinated Biphenyls (PCB).

Steve Romano said the PCB market has declined and it is no longer a significant market in Idaho. **Simon Bell** added that the 50 ppm limit on PCB still holds, meaning that any hazardous waste over 50 ppm must go through incineration.

Senator Werk asked who the corporation's largest Idaho customers are.

Steve Romano said aside from the US government, including the Army Corps of Engineers, the largest private customer is the Nucor Steel Company, and the largest in-state customer is Ammunition Accessories.

Senator Werk asked about the monitoring system on the liners in the treatment bins.

Simon Bell said monitoring happens daily and there has been no evidence of leaking.

Senator Broadsword asked about the newly-created Senior Radiation Safety position with the Idaho Department of Environmental Quality (IDEQ), and whether it was typical to fund state employees.

Steve Romano said it is not typical but it is provided for under Idaho law, and they felt it would be beneficial for oversight.

Senator Coiner asked about waste drug disposal, and **Steve Romano** explained that pharmaceuticals, or medical waste, are not typically dealt with at his site.

S 1338: **Paul Leary, Bureau Chief, Division of Medicaid, Department of Health and Welfare,** introduced **S 1338, Relating to Certified Family Homes**. His testimony is included as an attachment (Attachment #1). The bill relates to the confidentiality of an individual who files a complaint in the belief that a portion of Title 39 Chapter 35 Idaho code has been violated.

MOTION: **Senator Broadsword** moved that **S 1338** be sent to the floor with a Do Pass recommendation. **Senator Werk** seconded the motion. The motion carried by a **Voice Vote**. **Senator Darrington** will sponsor the bill on the floor.

S 1339: **Leslie Clement, Deputy Administrator, Division of Medicaid,** introduced **S 1339, Relating to Personal Care Services**. Her testimony is included as an attachment (Attachment #2). The proposed amendment deletes the requirement that personal services be ordered by a physician or an authorized provider. Attendant care in Idaho is essentially the same service and it stands as a model for this change.

Senator Darrington asked whether the changes proposed are simply to align the state with federal changes, and **Leslie Clement** affirmed.

Senator Compton and **Leslie Clement** discussed how personal care services are delivered, as well as the process of billing and auditing for these services.

MOTION: **Senator Coiner** moved that **S 1339** be sent to the floor with a Do Pass recommendation. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**. **Senator McGee** will sponsor the bill on the floor.

S 1340: **Cameron Gilliland, Developmental Disabilities Program Manager, Family and Community Services, Department of Health and Welfare,** introduced **RS 15406, Relating to the Developmentally Disabled**. The change requested will protect individuals with developmental disabilities by assuring that qualified evaluation committee members are available throughout the state. In some parts of Idaho, Ph.D. level psychologists are difficult to find, so this change will allow psychologists with a master's degree to serve on the evaluation committee. After discussion within the Department, it was decided that the bill should be amended to replace the term "health professional" with the term "psychologist."

Senator Broadsword asked whether the evaluation committees consist solely of Department employees, and **Cameron Gilliland** said no.

Senator Werk asked if the Department wants the bill sent to the amending order, and **Cameron Gilliland** affirmed.

Senator Darrington asked if the amendment might defeat the purpose of the bill (the purpose being to broaden the qualifications to serve as an evaluator) because the amendment would narrow qualified applicants from being any health professional to being only psychologists.

Cameron Gilliland explained it would still open the door for master's level psychologists. Allowing any master's level health professional to be on the evaluation committee might open the door too much, he said.

Marilyn Sword, Executive Director, Council on Developmental Disabilities, testified on the bill. The Council opposed the legislation until an amendment was discussed. The amendment is important because evaluators have the power to take away a person's rights under

guardianship, and the highest qualifications for evaluators should be necessary when such important decisions are to be made.

Jim Baugh, Executive Director, Comprehensive Advocacy, Inc., testified in opposition to the bill. He said an evaluator is not only involved in guardianship determination but also in involuntary commitment decisions. A psychologist, by definition, is able to measure intelligence and assess personality. Because these decisions are so serious, the best possible evaluator of their cognitive state must be assured.

Senator Compton asked if Mr. Baugh would be in support of the bill if it were amended, and **Jim Baugh** said he would withdraw his opposition if the amendment proceeded.

MOTION: **Senator McGee** moved to send **S 1340** to the amending order. **Senator Werk** seconded the motion. The motion carried by a **Voice Vote**. **Senator McGee** will sponsor the bill.

S 1341: **Mary Jones, Program Manager, Infant Toddler Program, Department of Health and Welfare,** introduced **RS 15492C1, Relating to Early Childhood and Early Intervention Services**. Her testimony is included as an attachment (Attachment #3). This bill consolidates two existing early intervention service groups into one council, improving efficiency; it expands the age-scope and system aspects for all early childhood issues; and it integrates the planning, action (like grant writing), advocacy, and advisory functions of the council.

Larraine Clayton, representing the Governor's Early Care and Learning Cross-Systems Task Force, testified in support of the bill. The governor's office and the task force members support the bill because it increases efficiency. Her testimony is included as an attachment (Attachment #4).

Senator Compton asked whether the consolidation would remove responsibility for the council from the Department's purview.

Mary Jones said the services will not be removed, but the council will.

Kristina Rice, member of both councils and parent of four young children, testified in support. The consolidation would help to foster inclusiveness for children with disabilities and delays, in addition to increasing efficiency.

Senator Broadsword asked Ms. Jones where the idea to consolidate the councils came from, and **Mary Jones** said she carried it to the task force.

Senator Coiner asked whether some of the wording changes indicated a change in practice or an alignment of practice with statute.

Mary Jones said the expansion of language relating to developmental delays and disabilities reflects common practice.

MOTION: **Senator McGee** moved to send **S 1341** to the floor with a Do Pass recommendation. **Senator Werk** seconded the motion. The motion

carried by a **Voice Vote**. **Senator Andreason** will carry the bill to the floor.

S 1342: **Dia Gainor, Emergency Medical Services Bureau Chief, Department of Health and Welfare,** introduced **S 1342, Relating to Emergency Medical Services** (EMS). Her testimony is included as an attachment (Attachment #5). This legislation adds language specifically requiring physician supervision of all Idaho EMS personnel who function at the basic EMT level or higher; it eliminates a grandfather clause related to ambulance minimum standards; and it adds language to create an EMS Physician Commission that would assume the current duties of the Board of Medicine specific to EMS.

Senator Broadsword asked if there was any objection from the Board of Medicine when it was removed from rulemaking authority and the commission was put in its stead.

Dia Gainor said the Board voted to remain neutral.

Murry Sturkie, Emergency Physician, testified in support of the bill. He said the **Idaho Chapter of American College of Emergency Physicians**, which he represents, is also in support.

Senator Werk asked Ms. Gainor what is covered by the fees which are referred to in the bill, how the change will affect the flow of money, and whether the legislation would create added costs in the future.

Dia Gainor explained the fees referred to are paid by advanced Emergency Medical Technicians (EMTs) for initial or renewal certification, and the fees average $16,500 per year. These fees buy paper patient-care report forms. Many ambulance services now submit this information electronically. A subcommittee which met quarterly, incurring travel and staffing expenses, will cease to exist upon formation of the commission.

MOTION: **Senator Werk** moved to send **S 1341** to the floor with a Do Pass recommendation. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**. **Senator Werk** will carry the bill to the floor.

S 1343: **Mike Sheeley, Executive Director, Idaho State Board of Dentistry,** presented **S 1343, Relating to the Board of Dentistry.** This bill would change the licensure of dentists and dental hygienists from once a year to once every two years, staggered. The annual renewal is very labor intensive and costly. This bill could reduce costs and workload by about 50% per year. Several other medical boards in Idaho renew licenses on multi-year bases as well.

MOTION: **Senator Broadsword** moved that **S 1343** be sent to the floor with a Do Pass recommendation. **Senator Coiner** seconded the motion. The motion carried by a **Voice Vote**. **Senator Broadsword** will sponsor the bill on the floor.

DISCUSSION: The committee asked Mr. Sheeley for an update on the oral sedation rule in the Board of Dentistry, and discussion ensued.

MINUTES: **Senator Coiner** moved that the minutes from January 30 be approved. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

ADJOURN: There being no further business, the meeting adjourned at 4:40 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Mister Chairman and members of the committee, my name is Paul Leary; I am a Bureau Chief in the Division of Medicaid. This afternoon I would like to review with you Senate Bill 1338 relating to the confidentiality of an individual who files a complaint in belief that a portion of the laws governing Certified Family Homes has been violated.

There are two interrelated changes in Idaho Code – one in Title 9 and one in Title 39.

Title 9 Section 340B is amended to include a new paragraph- number 16 which exempts from disclosure records or information identifying a complainant pursuant to section 39-3 *556* of the Idaho Code relating to Certified Family Homes.

Title 39 Chapter 35 is amended by the addition of a new section, designated *39-3556.* This addition allows a person to file a complaint if they think any portion of Chapter *35*, laws governing CFHs have been violated and to do so anonymously. It refers back to Title 9 section 340B. Additionally, it directs the certifying agency to investigate any complaint alleging a
violation of Chapter *35.*

I would be happy to answer any question.

(Attachment #1)

Good afternoon, Mister Chairman, members of the committee. My name is Leslie Clement. I am a deputy administrator with the Division of Medicaid.

This afternoon, I will be reviewing Senate Bill 1339 regarding a proposal to amend Idaho Code 39-5603 which describes the standards for the provision of Personal Care Services.

Personal care services are provided to individuals in their own homes or personal residences to prevent unnecessary institutional placement and to provide for the greatest degree of independence possible. Services typically provided under this category of service include assistance with bathing, dressing and eating.

This proposed amendment deletes Section (2) which currently requires that personal care services shall be ordered by a physician or authorized provider.

Changes in the Federal Code of Regulations, Section 440.167, give states the option to authorize Personal Care Services in accordance with a service plan approved by the state instead of relying on a physician order.

By removing the physician authorization requirement, the process for obtaining needed assistance will be expedited without sacrificing quality. All personal care services are provided based on a written plan of care or a negotiated service agreement. Idaho provides an assessment for medical necessity and oversight through its Regional Medicaid Services staff. The physician order is an additional unnecessary requirement.

A precedent for removing this requirement can be found by reviewing Idaho**'**s experience with attendant care under its home & community-based waiver program. Attendant care is essentially the same service as personal care. It has been provided solely under the assessment and oversight process and has been successful and efficient.

I respectfully request you approve the change in statute.

I would be happy to answer any questions you have at this time.

(Attachment #2)

TITLE: **SB** 1341
Title 16—Chapter 1 Amendments Building on a Firm Foundation

Introduction: Mary Jones, J-O-N-E-S. Good afternoon, I am here today to present amendments to Title 16, chapter 1, the Early Intervention Services Act. I know you have a had a long day so a will provide a brief history that explains what brings this legislation before us today, an overview of the purpose of the statutory changes that are proposed, and a summary of the significant changes.

Title *16,* Chapter 1 passed in 1991 as enabling **legislation** for our early intervention system (commonly know as the Infant Toddler Program). This act established the Department of Health and Welfare as the lead agency for Idaho s statewide interagency system of early intervention services for children birth to three. The system of early intervention services was to make sure that our state able to respond to the developmental concerns of the youngest and most vulnerable children living in Idaho to support their families and caregivers during the critical early years and give them the best chance to meet their potential. Research has demonstrated that identification and intervention of developmental concerns while the brain is malleable and growing rapidly has the best outcomes is highly cost effective..

The statute assures that Idaho is meeting the requirements of the Individuals with Disabilities Education Act. In addition to operation of the early intervention service components, our office in DHW has provided the staff support for the advisory body that is also required by federal code and in Title 16, *the Interagency Coordinating Council who role it is to advise and assist the Department as lead agency and other agencies in administration of early intervention services.* The ICC often said they advised and **insisted** and over the years, I believe that the Department has listened intently to their guidance and valued the support and direction. Together, the Dept., Partner agencies, and the ICC have built a very successful system to identify and serve infants and toddlers with developmental delays or disabilities and their families.—This system provides Idaho with a firm foundation on which to build.

Two years ago, the Governor s office decided to convene a task force for develop an Early Care and Learning Cross System Task Force. I was privileged to be on that Task Force and to coordinate with the Governor s office for the federal MCH grant that supported the work. After 2 years of diligent work, the Task Force has published a comprehensive **Early Care and Learning Plan** that addresses a wide range of early childhood issues *(Hold up the Plan).* **Early childhood is defined** in this plan and in the field **as ages birth to eight.**

This definition is based on the stages of development and recognizing the importance of developmentally appropriate practices and the unique needs of young children under 8. Last spring, the Task Force began planning for a "governance structure" for a council with ***statutory authority, the ability*** to *receive* ***funds from multiple sources, autonomy for early childhood work but a connection to the clout of the Governor's office, etc.***

(This is when Mary, the "go-to" began to panic a little and some more grey hairs.) The following questions emerged:

(Attachment #3)

*How would this group interface with the existing ICC, a federally required group we

had to assure? *Would they be duplicating one another s work? *Would I need to continue to staff one and attend both? *How can access be improved for children with disabilities happen when child care for all children needs to improve? *Would children with disabilities ever be truly integrated in planning or services for all children? *What could we offer? The solutions for the structural planning weren t coming easily for the

groLip. **That is when it became evident that there was a solution to address all of these questions—instead of two councils [one whose vision was to** *"Maximize* ***the potential of Every Young Child",*** the other whose vision was: **for** ***"All Idaho's Young Children to be healthy, nurtured by families with quality learning opportunities, and supported by community resources.*** '~ . . .a **partnership, an**

alignment, an integrated plan for all young children, an expansion that built on the firm foundation already built by the Infant Toddler Program and the Interagency Coordinating Council and a way to incorporate all the brainpower, energy and resources available through the momentum of the Early Care and Learning Gross System Task Force. (Heck, a simpler name!)

The potential to really achieve the visions of both groups while gaining efficiencies, aligning work and eliminating the risk of duplication was overwhelmingly appealing. And so the story goes: a summer of meetings and white papers later (and a lot of work in between), both groups—the Interagency Coordinating Council (ICC) and the Early Care and Learning Cross System Task Force have both unanimously voted that consolidating and merging their work is the best option!

So now, I will summarize of the changes proposed in the amendments:

' **Technical language changes** update to current requirements found in IDEA, Part C, as reauthorized including membership requirements,

v **Expands** scope of the ICC to be a comprehensive Early **Childhood Coordinating Council** with expanded age range and to address issue that will improve the outcomes for all young children and their families with language changes like young children and early childhood

v Sorting when the definition needed to be **specific to early intervention SERVICES for** infants and toddlers with developmental delays or disabilities and when it was about **system components** for all young children and their families *(like when we are identifying kids in screening that may need other referrals for health concerns even though they are not in need of developmental interventions).*

Breathe—the amendments also:
Enable support for the Early Care and Learning Strategic Plan
Clarifies that the Governor designates the budgetary and administrative oversight for the ECCC
Defines EC Standards as those that meet Nationally recognized standards or those promulgated in rule

And Provides a new provision in the Use Funds Section 16-111 that provides for the Early Childhood Coordinating Council to receive funds from any source, public or private.

So I present to you a package of amendments that
*consolidate existing groups into I council, not 2
*expand the age scope and system aspects for all early childhood issues
*integrates planning, action like grant writing, advocacy, and advisory functions. We have the potential for gaining efficiencies—in time; coordination, agreement, and adopted standards of practice.

I d be happy to review specific changes that are proposed, answer any questions, and ask you to build on the firm foundations of the Idaho early intervention system by **approving a Do-Pass** recommendation to the floor.

Mr. Chairman, I d be happy to stand for questions.

Mr. Chairman and Members of the Committee:

I am here on behalf of the Governor s Early Care & Learning Initiative and the members of the ECLCSTF.

We have full support from the Governor s Office and the Task Force on the proposed amendments and council merge.

We have carefully weighed the pros and cons of this merge which included hearty discussions. A white paper was developed early on that helped us work through the concerns of each group. We used a committee process to adopt language so that it meets the combined needs.

Senate Bill 1341 will take Idaho one step further toward strengthening state and community collaboration and efficient use of resources both monetary and human.

I respectfully request that you support the amendments to Title 16, Chapter 1 and move this Bill to the full Senate for consideration.

Thank you.

Larraine E. Clayton, M.Ed;

(Attachment #4)

Dia Gainor before the Senate Health & Welfare Committee
S. 1342
2/6/06

This legislation does 3 things: adds language specifically requiring physician supervision of all Idaho EMS personnel who function at the basic EMT level or higher; eliminates a grandfather clause related to ambulance minimum standards, and adds language creating an EMS Physician Commission that would assume the current duties of the Board of Medicine specific to EMS.

The Board of Medicine was instrumental in birthing EMS as a regulated medical profession in the early 1970 s. Ever since then, EMS issues have become increasingly challenging and time-consuming; yet resolution of these issues is essential to assure the safety of the public and patients who are in the care of ambulance services and other EMS providers.

Changes to Idaho Code in the mid-i 990s resulted in most of the Board of Medicine s regulatory duties associated with EMS being transferred to the Idaho EMS Bureau. Two responsibilities remained in the Board s domain: defining the allowable scope of practice of EMS providers and setting standards for medical direction.

EMS systems have evolved extensively in Idaho over the last thirty years, and the increasing complexity and volume of issues associated with scope of practice and medical direction are worthy of governance by EMS-knowledgeable physicians from throughout the state. The concept of an EMS Physician Commission has been developed with the guidance of several very dedicated EMS medical directors from across the state, including those with rural and frontier jurisdictions.

The Commission creates a forum for physicians and a consumer member to determine these standards, with each physician member representing a state organization or association that have a vested interest in the Idaho emergency medical services system. The physician members represent organizations that fall into three categories: state agencies and a state association with EMS system development and regulatory interests; state associations that represent the three most prevalent types of ambulance services in Idaho; and three state chapters of physician specialties with the unique expertise necessary to assure quality in the care the EMS system provides. All of the organizations named as having a seat on the Commission have expressed an affirmative interest in or formal support of the legislation. The Board of Medicine voted to remain neutral on the bill if it is introduced.

The outcome is a level of regulation that is equal to that which is in place today, improved through decision making by individuals who are subject matter experts in the discipline of out of hospital emergency medicine.

(Attachment #5)

The language in the draft legislation makes several assurances pivotal to the Commission s success:

- all appointments must include equitable geographic and rural representation
- dedicated funding from certification fees paid by EMS personnel will be appropriated exclusively for the Commission
- rulemaking authority for the Commission
- supportive relationship of the EMS Bureau, placing the Commission close to where the rest of the EMS administrative and policy issues are managed

If enacted into law, the draft legislation will also close the gap on potential independent practice by adding a new section with specific language (top of page *5)* requiring that EMS personnel to have their clinical activities supervised by a physician licensed in Idaho.

This will ends a perennial debate that weak language in administrative code fails to resolve today.

Finally, as a matter of housekeeping, drafting this legislation created an opportunity to delete a grandfather clause associated with legislative changes dating back over 25 years upon which there is no reliance by any local EMS agency today. We want to avoid any potential confusion that the grandfather clause can be engaged for this or subsequent changes to Idaho Code related to EMS. Finally, we also made two technical changes to the definition of the Advanced EMT on page 2.

In conclusion, the EMS Bureau position is that issues associated with scope of practice and medical direction are worthy of governance by EMS-knowledgeable physicians from throughout the state. The concept of an EMS Physician Commission makes this possible with the participation of organizations with a vested interest in the essential medical care and transportation that the Idaho EMS system provides.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE:	February 7, 2006
TIME:	3:00 p.m.
PLACE:	Room 437
MEMBERS:	Chairman Compton, Vice Chairman Broadsword, Senators Brandt, Keough, McGee, Coiner, Werk, Kelly
ABSENT/ EXCUSED:	Senator Darrington
GUESTS:	The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).
CONVENED:	**Chairman Compton** called the meeting to order at 3:08 p.m. and welcomed the guests.
GUBER-NATORIAL APPOINTMENT:	**Daniel Fuchs** of Twin Falls, Idaho, was reappointed by the governor to the **State Board of Health and Welfare** to serve a term commencing January 1, 2006 and expiring January 1, 2009. **Senator Werk** suggested that **Senator Coiner** carry the appointment to the floor.
MOTION:	**Senator Werk** moved to approve the appointment of Daniel Fuchs to the Board of Health and Welfare. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**. **Senator Coiner** will sponsor the appointment on the floor.
GUBER-NATORIAL APPOINTMENT:	**Larry Vincent** of Culdesac, Idaho was appointed by the governor to the **State Board of Health and Welfare** to serve a term commencing January 11, 2006 and expiring January 7, 2009.
MOTION:	**Senator Werk** moved to approve the appointment of Larry Vincent to the Board of Health and Welfare. **Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**. **Senator Stegner** will sponsor the appointment on the floor.
INVITATION:	**Roy Eiguren, representing Small Smiles Dental Clinics**, invited the committee to tour the dental facility in Boise which serves children on Medicaid. The committee later arranged to take the tour on February 8.
MINUTES:	**Senator Broadsword** moved that the minutes of January 31 be approved. **Senator Keough** seconded the motion. The motion carried by a **Voice Vote**.
PRESENTATION:	**Leslie Clement**, **Deputy Administrator, Division of Medicaid,** presented to the committee on the topics of **"Comparison of Mental Health Clinic and PSR Services"** and **"Provider Reimbursement."**

She introduced **Pat Guidry, Mental Health expert, Division of Medicaid, Department of Health and Welfare,** and **Ray Millar, Mental Health expert, Family and Community Services Division, Division of Medicaid, Department of Health and Welfare.**

Leslie Clement began with the presentation on **Medicaid Mental Health Clinic and Psychosocial Rehabilitation (PSR) Distinctions**. Her presentation is included as an attachment (Attachment #1). She explained the differences between the two services.

Senator Compton asked whether a mental health clinic needs a license from the Department to operate.

Leslie Clement said there is no license necessary and this has been identified as a weakness for the Department. Currently, if an individual wants to become a mental health clinic provider, they would request and complete a provider application.

Senator Broadsword asked if the Department does any inspections on providers to see if they complied with the application qualification requirements.

Leslie Clement said this concern is one of the reasons the Department came to the legislature last year to discuss a credentialing process. Currently, without the credentialing process, a provider simply fills out the application and they are assigned a provider number which allows them to bill Medicaid.

Senator Broadsword asked if providers have to show proof of liability insurance, and **Leslie Clement** said yes.

Leslie Clement said an individual must have a primary care provider's referral in order to visit a mental health clinic, but this is the extent of supervision.

In response to a question by **Senator Compton**, **Leslie Clement** said the Bureau of Audits routinely reviews utilization trends. The Bureau is the only oversight mental health clinics have, as far as tracking whether the services which are billed to Medicaid are actually being given. If a complaint is filed, or if utilization patterns look unusual, the Bureau will follow up with an unannounced visit. Because the staff is spread thin, these clinics are not always a priority.

Senator Compton asked who a primary care provider is, and **Leslie Clement** said they could be a family practitioner, etc.

In response to questions by **Senator Werk, Leslie Clement** said there is not a very good safety net in place for people when they are released from the hospital. There is a gap between the community-based provider services and hospital services ranging from 30 to 90 days. **Ray Pillar** added that, built into the PSR rules, an individual is automatically eligible for PSR services for 128 days upon discharge from a hospital. The rules are not a barrier, but the gap is due to other factors.

Senator Broadsword asked whether the committee had adopted a rule on credentialing either this year or last year.

Leslie Clement said that last year, the Department received a $400,000 appropriation to fund a full-time staff responsible for overseeing and implementing a credentialing system. $350,000 was to be used to out-source the credentialing program. This year, Pat Guidry came before the committee and presented temporary rules to start the credentialing program. Once a contract is in place, the Department will have a clearer idea what to ask for next year.

Senator Compton asked what happened with the $400,000.

Leslie Clement said $50,000 was spent on a full-time employee to re-engineer the existing provider agreements, among other things in moving to the credentialing process. The Department also hired a consultant to aid in best practice issues and to look at what other states are doing. The Department is asking to keep the leftover money to continue the process.

Senator Werk asked whether the Department's main concern with one-person clinics has to do with the difficulty of keeping track of them all or whether there is a broader reason.

Leslie Clement said the Department's concern has to do with how one-person clinics have failed to read and understand the rules governing them because the rule specifically states a clinic must have at least two staff members. Concerning quality, the Department is worried about how a one-person clinic handles backup and emergencies. One-person clinics fail to follow best practice guidelines.

Senator Coiner referred to an email in which a licensed clinical social worker is asking the Department to monitor these businesses because no oversight has happened in ten years.

Leslie Clement said there is minimal oversight of mental health clinic services, which is why the Department is pushing for a credentialing program. The Department is well-aware of the problem.

Leslie Clement then presented to the committee on **Provider Reimbursement,** and her presentation is included as an attachment (Attachment #2). She focused on provider growth.

Senator Compton asked what latitude is given to set fees for reimbursement, and **Leslie Clement** said there are some specific federal Medicaid laws about reimbursement rates, like hospice rates, Indian health services, and Federally Qualified and Rural Health Centers. Everything else is under the state's discretion. She said many of the concerns heard in the January 19 committee hearing are under the state's discretion.

Senator Werk commented on the lack of growth in nursing facilities as the population ages and asked whether it is caused by more in-home care options, etc.

Leslie Clement said yes. There is a waiver called the Aged and Disabled Waiver which now serves about 7,000 individuals. In order to be eligible for the waiver, the provider has to provide the same care that a nursing home would provide. This keeps more individuals in the community.

Senator Werk commented that this is a Department success story because it saves the state money in the long run.

Senator Broadsword asked what is contributing to the substantial growth in the number of people using Medicaid services, and **Leslie Clement** attributed it to Idaho's high uninsured rate and to the recent economic recession, but not to population growth. She stated that most Medicaid newcomers are children.

Ray Millar said there are four factors in the growth of health services: 1) greater numbers of uninsured individuals; 2) the expansion of the CHIP program; 3) un-managed services like the medical health clinics; and 4) budget decreases within the Department resulting in staff reduction which caused services to be outsourced, creating inefficiencies.

Senator Compton asked what **Leslie Clement**'s recommendations would be to increase efficiency, and she expressed her commitment to implementing the credentialing process. She said money has been budgeted to contract out for this program. She also recommended an examination of employee benefits and pay-for-performance strategies to target the outcomes the Department wants.

Senator Compton thanked **Leslie Clement** for her presentation and asked for any final comments from her colleagues. **Ray Millar** said the Family and Community Services Division is fully supportive of the credentialing effort.

ADJOURN: There being no further business, the meeting adjourned at 4:35 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Mister Chairman, members of the committee. This afternoon, I will be covering two topics per your request. You had asked for a report on Medicaid Mental Health Services and a report on Provider Reimbursement Trends. I would like to introduce the committee to two of my staff who may need to bail me out if I can*t answer your questions. Pat Guidry is our expert on MH policy and Sheila Pugatch is our expert on Medicaid reimbursement.

I*ll take the first part of this meeting to review the current Medicaid benefits for mental health services. Chairman, you had asked that we provide a description of the differences between Mental Health Clinic services and Pyscho-Social Rehabilitation services.

Both benefits have been part of Medicaid coverage since the early 1990*s. Mental health clinic services preceded PSR services by a couple of years.

I*ll first review Mental Health Clinic services. Medicaid will only pay for MH Clinic services if a completed and approved provider agreement has been established with an agency. The provider agreement sets forth the contractual requirements needed in order for Medicaid to pay for services.

MH Clinic services are based on the medical model which means that services are physician-directed and must be provided with physician oversight. Services are provided in distinct locations and must not be provided in unregulated settings such as in homes or community locations. A clinic agency is minimally defined as having two qualified staff in order to provide sufficient coverage in case of emergencies and back-up. Mental Health clinic service benefits are available to any Medicaid participant with any type of problem that may be resolved through counseling and/or medication management. Medicaid participants must only obtain a referral from their primary care provider to access these types of clinic services. For example, children who have behavioral issues that are not associated with a serious a mental illness can come to the clinic for counseling services. Or, adults who may have minor depression but aren*t serious~y mentally ill, can receive mental health clinic services. There is no specific diagnosis required to access clinic services. Mental Health Clinic agencies typically bill
Medicaid for the following services:

- Medical reports
- Psychiatric diagnostic interviews and exams
- Social history and evaluation
- Psychological testing
- Individual and group psychotherapy
- Collateral contact
- Partial care
- Medication management
- And other related services **(Attachment #1)**

Benefits are subject to limitations. For example, evaluation or diagnostic services are limited to 12 hours per calendar year per participant. Psychotherapy services are limited to no more than *45* hours per calendar year. Partial care, a service that has come under some increased scrutiny over recent years is limited to 36 hours/week. The limitations are the same for all participants regardless of varying needs. This is an example of the concern prompting Medicaid reform — that one size doesn**'**t fit all. Currently, a participant with a relatively minor behavioral issue could receive the same amount and type of MH Clinic service as someone who has a serious mental illness.

Psycho-Social Rehabilitation services are unique from clinic services in a number of ways. First, this benefit is limited to those who have serious mental illnesses. Children must be diagnosed with a severe emotional disturbance and have a minimum of 2 functional limitations. Adults must be diagnosed with Severe and Persistent Mental Illness and also have at least two functional limitations. Functional limitations refer to a substantial disturbance or coping skills related to areas such as work, school and basic living skills.

The other significant distinction between PSR and MH clinic is that PSR is based on a social model rather than a medical model. That means these services are typically provided in homes and in the community. PSR is not intended to be a quick fix rather services are oriented toward training and skills development. PSR is intended to reduce to a minimum an individual**'**s mental disability and restore the participant to the highest possible functional level within the community.

PSR service agencies must employ a minimum of two staff in order to provide for emergencies and back-up. In order for a participant to receive PSR services, a referral is required from their primary care provider. There is greater latitude for PSR service oversight as it relates to the physician supervision requirement. Whereas clinic services must be supervised by physicians, PSR services allow other professional staff to provide for supervision of services. This reflects the difference between a medial model service and a rehabilitation model.

Additionally, all PSR services are prior-authorized by the Mental Health Authority which resides in the Family and Community Services Division. The Mental Health Authority has focused its resources on this target population because they are at greatest risk of hospitalization and have the most serve needs. The Mental Health Authority has re-organized its staff in order to devote time to training providers, initiating quality assurance reviews, and auditing medical records.

Typical services paid by Medicaid for PSR include:

- Crisis support
- Diagnostic interviews and exams
- Individual and group psychotherapy
- Medication management

- Individual psychosocial rehabilitation
- Collateral contact
- And other related services

PSR benefits are subject to limitations based on prior-authorization and established caps that are designed to meet specific mental health care needs.

In conclusion, there are some key differences between MH Clinic and PSR services. Oversight is also different. Although all agencies that are paid by Medicaid are responsible for ensuring that their employees meet established Qualifications and requirements, the on-going review and monitoring is different. MH Clinics are subjected to far less oversight than PSR services. Medicaid relies primarily on its rules regarding qualifications and service requirements. It also relies on the physicians to make appropriate referrals and provide supervision of clinic services. Standard communications about service expectations are managed through provider handbooks, information releases, negotiated rule making and meetings with stakeholders.

PSR service oversight is somewhat more extensive that MH Clinic oversight. The MH Authority has directed its resouces to this population with the most severe mental health care needs. As previously mentioned, the MH Authority reviews each participant's services and conducts prior Authority reviews each participant's services and conducts prior authorization. The MH Authority also conducts training and on-site reviews.

Additionally, the Department also relies on the Bureau of Audits & Investigation for auditing all providers. The bureau monitors utilization patterns & trends, conducts unannounced site visits, and investigates complaints relating to program fraud or abuse.

At the present time, there are insufficient resources to follow-up on all areas of concern. We have ben in a position of reacting rather than pro-actively designing a system that minimizes the risk of inappropriate or poor quality of care. In order to address this problem, the Department is currently developing a mental health provider credentialing program - a system that certifies that agencies have the appropriate qualifications to provide necessary care before Medicaid begins paying for that care. The credentialing system will be a proactive approach that will include state-wide training, on-site reviews, and renewal reviews.

This concludes my overview of Medicaid MH services. I would be glad to answer your questions at this time.

The next topic I was asked to cover is Provider Reimbursement Trends. I'd like to pass out some hand-outs for this overview.

The packets before you begin by identifying eleven service categories that have represented Medicaid's top ten cost drivers in either state fiscal year 2000 or in state fiscal year 2005.

Your top page shows the type of service followed by the reimbursement methodology used by Medicaid to pay for those services. You'll note that there are different reimbursement methods applied.

- For prescription drugs, Medicaid uses a formula to pay the lesser of a state maximum allowable amount, the federal upper limit, or the average wholesale price — 12%. Medicaid also has implemented an enhanced prior authorization program which combines a scientific evaluation of therapeutic value and a negotiated price.
- Inpatient Hospital services are reimbursed through a cost settlement process handled by the State's contracted auditors.
- Nursing Facility reimbursement is based on a prospective payment system that is also managed by the State's contracted auditors.
- Mental Health services are reimbursed on a fee schedule.
- Physician services are also fee-for-service based, but are subject to an annual inflation adjustment which is identified in statute.
- Developmental Disability Agency services are reimbursed on a fee schedule.
- Personal Care Services are reimbursed on a fee schedule that is adjusted annually based on a survey conducted by the State's contracted auditors.
- Outpatient Hospital services are based on a cost settlement process, the same as inpatient services.
- Developmental Disability Waiver services are reimbursed on a fee schedule. There is some variation with daily rates, monthly rates, and per service rates.
- Intermediate Care Facilities for the Mentally Retarded are based on a prospective payment system managed by the State's contracted auditors. And
- Dental services are based on a fee schedule.

All methods of reimbursement involve the transfer of two types of risk. The first is a financial risk and is the difference between the cost of providing a unit of service and the fee charged for that unit of service. The second type of risk is utilization. Utilization risk is the risk associated with the provision of

(Attachment #2)

more units of service than is budgeted. Fee for service reimbursement can encourage over-servicing

because every encounter results in income for the provider. I mention this because the data that follows can be result of utilization as much as pricing. These two variables, in addition to caseload affect the total amounts paid by Medicaid for these services.

On the second page, you**'**ll see that these same services are ranked for both 2000 and 2005 in the order of the greatest amount paid. Prescription drugs, inpatient hospital services and nursing home services continue to be in the top three cost drivers for both years. The first box in blue shows the paid claim experience in 2000 and the green box shows 2005 claims payment experience. At the bottom of this page you**'**ll see how things changed over the fiveyear timeframe. You**'**ll note that the actual dollar change, the PMPM (which stands for per member per month) change, the change in unduplicated users of the service and finally the per user cost change.

Of significance:

- Prescription drug costs rose by $94,000,000 with a per user increase of 36.4%
- Mental health services jumped from a rank of $_{8}$th in 2000 to $_{4}$th in 2005 with an overall increase of $54,000,000 and a per user increase of 44%
- Outpatient hospital services and DD waiver services also increased on a per user basis of over 40%
- Dental payments per user was the only category that decreased on a per user basis

The next three pages chart these changes in bar graphs. The first bar graph shows the differences in paid claim total by category of service between 2000 and 2005. You can see that most payments indicate significant increases over this timeframe, with just ICFs with just a slight increase.

The second bar graph shows the percentage increase in paid claims totals. Institutional services in nursing homes and ICFs showed just a slight increase. Total payments for mental health services and for DD waiver services saw the greatest percentage increase, well over 200%.

The last bar graph shows the change in unduplicated users. This aligns with the growth in the payments in that mental health and DD waiver programs have the largest increase.

The next two pages in your packet have been copied out of the Community-based Provider Reimbursement report. We reviewed providers of mental health and developmental disability services to determine elements related to the growth. We identify the change in the number of provider agencies from 200 through 2004, the growth in number of users (or participants), the total payments for the related services and payment per participant for the two years.

We noted increase in all service categories with the exception of service coordination agency total payment and per participant payment. This resulted from a budget cutback that reduced the fees paid

for service coordination.

I want to acknowledge that the materials before you are aggregated data. There are approximately 50 detailed procedure codes that have been summarized. There are some services where fee-for-service reimbursement may be too high — others where it may be too low. Medicaid's fee for service methodology does entail utilization risk where over servicing occurs.

In conclusion, we are looking at significant increases across the ten service categories I have reviewed. There are some management tools we can use to control the rate of growth, some new reimbursement methods that will need to be implemented along with new approaches to purchase services. We need to continue to examine what and how we pay for services in order to ensure that Medicaid participants get what is needed, not more, not less.

I'll be glad to answer any questions you might have.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 9, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Kelly

ABSENT/ EXCUSED: Senator Werk

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:09 p.m. and welcomed the guests in attendance.

RS 15959: **Senator Darrington** introduced **RS 15959, Relating to Medicaid Reimbursement.** He said the RS deals with dental reimbursement by adding dentists to Section 56-136 Idaho Code, which provides for an annual readjustment for the rate of reimbursement for physicians.

MOTION: **Senator Keough** moved **RS 15959** to print. **Senator McGee** seconded the motion. The motion carried by a **Voice Vote**.

MINUTES: **Senator Broadsword** moved to approve the minutes from February 2. **Senator Keough** seconded the motion. The motion carried by a **Voice Vote**.

Senator Kelly moved to approve the minutes from February 1. **Senator Coiner** seconded the motion. The motion carried by a **Voice Vote**.

ADJOURN: There being no further business, the meeting adjourned at 3:14 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 13, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:05 p.m. and welcomed the guests in attendance.

RS 16038: **Senator Stegner** prepared **RS 16038**, **relating to Regional Health Service**, after extensive work with the subcommittee on mental health.

MOTION: **Senator Darrington** moved to print **RS 16038. Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

RS 16053: **Senator Compton** said **RS 16053**, **relating to Medicaid**, provides respite care for family members who need a chance to get out of the house.

MOTION: **Senator Darrington** moved to print **RS 16038. Senator Broadsword** seconded the motion. The motion carried by a **Voice Vote**.

PRESENTATION: **Michael Wilson,** representing **the Idaho Association of Developmental Disabilities Agencies (IADDA) and Idaho Residential Supported Living Association (IRSLA),** and **Shelley Holmes,** representing **IADDA,** presented on **Developmental Disabilities.** The two associations represent more than 3,000 employees in businesses throughout Idaho. Their slide show is included as an attachment (Attachment #1-Chart).

Shelley Holmes presented to the committee on employee wages in the context of Medicaid reimbursement. On average, Developmental Disability Agencies (DDAs) spend 17% more per year than they bring in from Medicaid. She explained to the committee a methodology used to project what wages should be to attract qualified employees.

Senator Compton asked what the qualifications are to be a developmental specialist.

Shelley Holmes said they must have a four-year degree, at least six weeks experience, and if they work with children, a certification course.

Any four-year degree is accepted, but if it is not a human service degree, applicants must take a certification course.

Michael Wilson explained the adjustments to the specific procedural billing codes which his association is requesting, and discussed the fiscal impact increases projected for 2006.

Senator Werk commented that the projections are based on utilization remaining the same, but historically, when reimbursement rates rise in one area, providers migrate accordingly, causing a higher fiscal impact.

Michael Wilson added that the Department of Health and Welfare has the ability to manage utilization.

Senator Werk asked if the tiers in Medicaid reform would have to add more control structures associated with the delivery of services.

Leslie Clement, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, said the only benefit changes necessitating extra departmental control is in the first tier. The population under discussion now will not be effected.

Several line items were discussed in-depth pertaining to the projected fiscal increases, what factors contribute to these rising costs, and how the estimates were drawn. The final projections in the slide show (see Attachment #1) represent the amount the associations desire in increases.

Michael Wilson concluded by referring the committee to a handout on recommendations for JFAC (Attachment #2). The associations recommend a more formalized method of reviewing and determining reimbursement rates by contracting for market analysis for rate determination.

Senator Werk asked why they are making these recommendations to JFAC because JFAC does not set rates; it only appropriates money.

Michael Wilson said they are asking the germane committees for help in deciding how to address this issue.

Senator Compton suggested the associations get involved with the Department to develop a plan for reimbursement. JFAC cannot solve the problem simply by freeing up monies to raise rates.

Senator Werk expressed concern that wages are so low for employees in this industry that the quality of care is at risk due to high turn-over and the inability to attract qualified candidates for employment. **Michael Wilson** agreed that entry-level wages compete with the fast food industry currently.

Senator Broadsword asked whether the associations have thought of any cost-cutting measures.

Michael Wilson explained that the industry he represents saves the state

money because it keeps individuals out of state institutions.

Senator Compton asked whether the Certified Professional Accountant (CPA) who was hired to do the analysis for the associations saw any areas that might be over-compensated.

Michael Wilson said the CPA looked at just two positions, paraprofessionals and developmental specialist, and neither are over-compensated.

Leslie Clement commended the work done to research the issue, and expressed concern about the supported living procedure codes. These codes are supposed to serve a very small population but due to their complexity, there is opportunity for manipulation and it puts the state at risk. The Department worries about locking into an annual increase across the board.

Jim Baugh, Executive Director, Comprehensive Advocacy, Inc. (Co-Ad), expressed concern that some people will be precluded from service because they are viewed as undesirable clients based on the lack of income they bring to a facility. Reimbursement rates cannot preclude access for the people who need the services most. A small number of individuals require services 24 hours a day, and they cost a facility more than other individuals do in terms of time and money. Without adequate reimbursement, these individuals may not be served well or at all. The current methodology currently used to determine reimbursement rates tends to operate on averages, and fails to meet the needs of the individuals who would cost the state the most money if the system fails them. He mentioned the Wyoming model which operates more on an individual basis.

Senator Broadsword asked whether an individualized program could be addressed under the Medicaid waiver.

Jim Baugh said it could be addressed in several ways, including through the current home and community based waiver, the reform system, and in other ways.

Leslie Clement said the Department has been looking at the Wyoming model, which is an individualized budgeting methodology.

Senator Compton said all the parties involved – including providers, insurers, etc. – need to come to the table objectively and find solutions for the reimbursement issue in ways that are more comprehensive than just raising rates. Until then, each actor will view each other as a competitor. He asked for Ms. Clement's ideas on addressing the issue.

Leslie Clement recommended hiring an objective third party consultant to examine the issue.

Senator Compton thanked those who participated in the presentation.

MINUTES: **Senator Coiner** moved to approve the minutes from February 6. **Senator Werk** seconded the motion. The motion carried by a **Voice**

Vote.

ADJOURN: There being no further business, the meeting adjourned at 4:07 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 14, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Brandt

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:09 p.m. and welcomed the guests in attendance.

S 1370: **Roy Eiguren, attorney and lobbyist**, representing **Forba corporation**, presented **S 1370**, **relating to Medicaid Reimbursement**. This bill adds dentists to an existing statute which governs Medicaid reimbursement for physicians. Eighty percent of dentists in Idaho provide services to Medicaid clients, although few do it on a substantial basis due to a large number of no-shows (35-40%). Because dentists rely on filling their schedules as a financial foundation of their practice, no-shows come at a high cost. Dentists have not had an inflation adjustment for 16 years, even though physicians average a 2% adjustment per year. The costs associated with the dentistry profession and the need to attract people to the profession due to a shortage prompts this legislation.

Roy Eiguren stated that the fiscal note with the bill is $100,000 too high. His original estimates have since been more precisely calculated to reveal the lower amount.

Senator Werk asked what the yearly billings are from Small Smiles, a local dental clinic which serves Medicaid and low-income children only.

Roy Eiguren said on average, in the 10 months the clinic has been in operation, it has averaged $40,000 per month.

Senator Werk asked how Small Smiles copes with a 40% no-show rate, and **Roy Eiguren** said the way the clinic is set up allows for certain unique efficiencies which facilitate an increased purchasing power for equipment, etc. It is also very aggressive in getting patients to show up, including making at least three phone calls to their household, phoning the agency/person which referred them, and mailing several post-cards.

Senator Kelly asked if the fiscal note reflects the $40,000 per month billing, and **Roy Eiguren** said no. There was not a prediction of increased

costs because of increased utilization because the clinic is already set up to serve many more patients than it currently does.

Senator Compton pointed out that this bill is not specific to Small Smiles, but applies to all dentists who serve Medicaid clients.

Senator Darrington asked whether Small Smiles made the decision to come to Idaho based on an anticipated increase in the state's reimbursement rate, or whether the clinic estimated the economic feasibility based on the rate at the time.

Roy Eiguren said Small Smiles came to Idaho based on the existing reimbursement rate, and not predicated on a change to that rate. This bill just catches dentists across the profession up with physicians in terms of reimbursement.

Skip Smyser, lobbyist for the **Idaho State Dental Association,** testified in support of the legislation. He said this bill is as much symbolic as it is solution-oriented to this growing problem. He said his clients are, at most, compensated 40% for Medicaid patients. The gap continues to grow as do the costs of providing these services. It is important to treat dentists as physicians because they maintain the same community involvement and responsibility as physicians do. If the disparity is not addressed, dentists will become unwilling to take Medicaid patients.

Leslie Clement, Deputy Administrator, Division of Medicaid, Department of Health and Welfare, said the intent behind the bill aligns with the intent behind Medicaid reform.

Senator McGee asked whether this bill fits into the governor's Medicaid reform plan, and **Leslie Clement** said she saw no conflict.

Senator Kelly asked about the need for Medicaid dental services versus the number of willing providers.

Leslie Clement said she did not have the specific numbers, but the majority of practicing dentists participate. However, the dentists place limitations on the number of Medicaid patients they will take.

Senator Kelly asked if there was a way for the Department to find out if there are people who need dental services but cannot access them.

Leslie Clement said the Department could try to get access from the Idaho Care Line data to get an indication of the numbers of individuals who express a need for dental services, but it would not be an easy number to get.

Senator Werk asked if dental services would become co-paid under Medicaid reform.

Leslie Clement said the specifics of cost-sharing is still being discussed, but copays will probably be included in the reform.

There was discussion about changing the fiscal note.

MOTION: **Senator McGee** moved to send **S 1370** to the floor with a **Do Pass** recommendation, with the changed fiscal note of $150,000. **Senator Keough** seconded the motion. The motion carried by a **Voice Vote**. **Senator McGee** will sponsor the bill on the floor.

ADJOURN: There being no further business, the meeting adjourned at 3:43 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 15, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:13 p.m. and welcomed the guests in attendance.

GUBER-NATORIAL APPOINTMENT: **Janet Penfold** of Driggs, Idaho, was reappointed by the governor to the **State Board of Health and Welfare** to serve a term commencing January 1, 2006 and expiring January 1, 2009. **David Butler, Deputy Director, Department of Health and Welfare** introduced Ms. Penfold and said she has served on the Board since 1997.

Janet Penfold spoke to the committee about the importance of having a woman on the Board and the importance of the Board going over the rules before the rules go to the legislature. She said she enjoys serving on the Board.

Senator Compton asked whether she felt the Board has latitude to suggest change to rules, and **Janet Penfold** said yes. The Department and other parties have welcomed suggestions from the Board.

Senator Broadsword commended Ms. Penfold on the amount of community service in which she has been involved.

Senator Werk asked where the Board meets and whether the meetings are public.

Janet Penfold said the Board meets in Boise usually, but occasionally in Idaho Falls and Moscow. The meetings are announced and public.

Senator Compton explained the committee's custom of voting on appointments the day following their introduction, and he thanked Ms. Penfold for speaking to the committee.

PRESENTATION: **Senator Compton** introduced the presentation on **Mercury**, a collaborative effort by the **Department of Environmental Quality (DEQ),** the **Department of Health and Welfare - Division of Health,** and the **Environmental Protection Agency (EPA)**.

Toni Hardesty, Director, DEQ, introduced **Dick Schultz, Administrator, Division of Health, Department of Health and Welfare,** who then introduced **Elke Shaw-Tulloch, Chief, Bureau of Community and Environmental Health, Department of Health and Welfare. Elke Shaw-Tulloch** gave the committee an overview of the mercury issue, and her testimony is included as an attachment (Attachment #1). She referred to several handouts: the cycle of mercury in the environment (Attachment #2-Chart); frequently asked questions on its toxicity (Attachment #3-Chart); fish consumption advisory program protocol (Attachment #4-Chart); an example of a fish advisory sign (Attachment #5-Chart); a map of advisory locations (Attachment #6-Map); and safe fish eating guidelines at various water bodies in the state (Attachment #7-Chart).

Senator Coiner asked whether the fish used to obtain data for the Idaho Fish Consumption Advisory Program (IFCAP) are sized and aged to see if mercury content is correlated with size and age.

Elke Shaw-Tulloch said yes. Generally, the older, larger, and more predatory the fish, the higher the concentration will be. Correlation with mercury content tends to have more to do with the species of the fish than its size or age, however.

Senator Werk asked if the state tests newborns for mercury, and **Elke Shaw-Tulloch** said it does not, but it relies on national studies for information relative to newborns and mercury.

Senator McGee asked about an earlier reference to a University of North Carolina (UNC) - Asheville study and commented that any efforts to reduce mercury would have to be on a regional or national basis due to the global deposition of mercury.

Elke Shaw-Tulloch said there need to be control measures to monitor the amount of mercury the state releases.

Senator Darrington asked if fish, water, or the food supply of the fish is tested for information on contamination.

Elke Shaw-Tulloch deferred this and other questions to DEQ, which will present the next part of the presentation.

Michael McIntyre, Programs Manager, Surface Water, DEQ, spoke to the committee about how DEQ is addressing mercury in Idaho. He presented a slide show in booklet form (Attachment #8-Chart). There was discussion about the different measuring units used to communicate the data. The criterion, which is listed at the bottom of each graph in the slide show, indicates the amount at which the contamination becomes dangerous. The criterion were established through EPA, based on the consumption of ten fish of a catch-able size.

Senator Compton asked how DEQ found out that Priest Lake was contaminated, and **Michael McIntyre** said DEQ received and analyzed specimens from the Department of Fish and Game.

Senator Darrington asked if elemental mercury which occurs naturally can transform into methylmercury absent any emissions, and **Michael McIntyre** said it can. Determining the source of contamination is very important to DEQ for that reason.

Senator Werk asked about the recent Utah advisory pertaining to mercury in ducks, and **Michael McIntyre** said that the ducks which had eaten brine shrimp in the Great Salt Lake became contaminated. This advisory was the first of its kind in the nation.

Senator Coiner commented that five years seemed like a long time to spend looking at water bodies throughout the state, and **Michael McIntyre** and **Toni Hardesty** explained DEQ's plan to conduct the research.

Senator Broadsword asked where the laboratory is located which does the testing and whether it is public or private. **Michael McIntyre** said DEQ utilizes the state laboratory. Previous testing has been done by the EPA lab in Washington, at no cost.

Senator Coiner asked about air quality and where the mercury originates. **Toni Hardesty** answered that it is both globally and locally deposited. She referenced the gold mines south of Idaho's border which use a roasting process to mine the ore. DEQ is looking at each water body individually to determine the source. Idaho produces very few mercury emissions. Nationwide, emissions are declining and studies on the east coast have revealed a three to four year return rate in fish tissue, etc.

Senator McGee pointed out that the state may be at a competitive disadvantage when ten times the amount of mercury emissions come from Asia. He asked how high DEQ prioritizes this issue in terms of immediacy.

Toni Hardesty said that although it is not a line item in their JFAC request this year, it is still a high priority and DEQ hopes to find ways to fund the research outside the general fund, through grants, etc. Should the grant funding fall through, it may become a line-item in next year's budget.

Senator Kelly asked whether there are industrial sources in Idaho which are permitted to emit mercury, and whether there is a national or state standard on emissions.

Toni Hardesty said that any entity which produces more than ten pounds of mercury needs to file with the state. There have only been two sources which have reported. One is now below the ten pound limit.

Senator Kelly asked whether mercury is permitted or just reported. **Mike DuBois, Air Quality Analyst, DEQ,** described the permitting

process for air emissions. There is a state standard of .005 ml/cubic liter for these emissions, unless the facility was built before 1995.

Senator Broadsword asked whether all mining practices produce mercury or whether there are some which do not. **Toni Hardesty** said mining processes differ in how much mercury is emitted.

Senator Werk asked about ambient air quality standards, since there is no federal air quality standard for mercury. **Mike DuBois** said there is a state rule derived from OSHA, but the rule cannot be applied if there is a relevant similar standard in place. **Senator Werk** commented that blaming global deposition and ignoring local emissions can affect decisions concerning the health of Idahoans.

Senator McGee stated disagreement with **Senator Werk**, and said that clearly, mercury is a global problem which must be addressed as such.

Senator Coiner asked about the EPA's national rule. **Pat Nair, Senior Air Permits Engineer, Idaho Operations Office, EPA,** said the Clear Air Mercury Rule was promulgated as final in March 2005, but after several petitions were received, the EPA posted a notice of reconsideration for several provisions in the rule. The date for repromulgation is not yet known.

Senator McGee requested that **Elke Shaw-Tulloch** provide the committee with copies of the UNC-Asheville study.

Senator Coiner asked who posts the fish advisories, and **Elke Shaw-Tulloch** said the Department Health and Welfare provides the signs and the US Geological Survey, Fish and Game, and other partners post the advisories. Because there are no funds or staff dedicated to the issue, the Department relies heavily upon its partners.

MINUTES: **Senator McGee** moved to approve the minutes of February 7. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**.

Senator McGee moved to approve the minutes of February 9. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**.

APPRECIATION: **Chris MacMillan, Senate Page,** was presented a gift, a card, and a letter of recommendation in appreciation for his service to the committee.

ADJOURN: There being no further business, the meeting adjourned at 4:49 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MERCURY PRESENTATION
2006 Legislature

Idaho Fish Consumption Advisory Program

Elke Shaw-Tulloch, MHS
Chief, Bureau of Community of Environmental Health, IDHW

What is Mercury?

Mercury is a naturally occurring element found in soil, water arid air. It exists in several forms: elemental or metallic, inorganic compounds and organic compounds. It is released into the environment by natural breakdown of minerals in rocks and it is also released during specific industrial processes (mining, burning fossil fuels, solid waste incineration).

Mercury in the air eventually settles into water or onto land where it can be washed into water. Once deposited, certain microorganisms can change it into methylmercury, a toxic form that builds up, or bioaccumulates, in fish, shellfish and animals that eat fish. (See handout –Cycle of Mercury in the Environment)

Methylmercury is of particular importance to public health because approximately 95% of methylmercury will be absorbed into the gastrointestinal tract when swallowed compared to elemental mercury where virtually none is absorbed.

Mercury is persistent in the environment and is transported and deposited globally through specific meteorological conditions. Mercury deposition is not an issue specific to Idaho. A February 9 article in the LA Times describes results of a study conducted by the University of North Carolina-Asheville showing that methylmercury exposure has little to do with proximity to pollution sources because of mercury**'**s ability to be transported globally and its bioaccumulative effect. Instead the majority of methylmercury exposure appears to be determined by diet and in particular the consumption of fish.

Health Effects of Methylmercury:
The health effects of methylmercuryexposure depend upon:

- Dose (amount that enters the body)
- Age of person (fetus and young children most susceptible)
- Duration of exposure
- Route of exposure (eating, breathing, skin contact)
- Health of person exposed

 (Attachment #1)

Methylmercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. Because many regulatory and environmental changes have occurred over time lowering the global release of mercury, it is unlikely the general population will receive high level exposures. Research shows that most people**'**s fish consumption does not place them in the high exposure category where health issues are of concern.

Unborn babies, however, may receive a high level exposure of mercury due to a mother**'**s ingestion of fish with lower levels of methylmercury. Methylmercury is known to pass easily through the mother**'**s bloodstream into the developing brain of the fetus making them less able to think and learn as they grow. Young children can be adversely affected by low doses of methylmercury because of their developing nervous systems.

Several low dose studies in the 1 990s (i.e., Seychelles Island, Faroe Island, and New Zealand studies) show this relationship between lower level maternal exposures and the health effects in unborn babies. Based on these and earlier studies, US Environmental Protection Agency (EPA) developed a reference dose of 0.1 ug/kg of body weight per day that is protective of young children and fetuses.

- Provided to you is the ToxFAQs™ developed by the Agency for Toxic Substances and Disease Registry (ATSDR), which provides more detail on the health effects of mercury from all exposures.

States across the nation have been becoming more aware of the need to address mercury in fish tissue and the potential risk for children and fetuses. EPA and the Food and Drug Administration (FDA) have issued a national fish consumption advisory targeting women of reproductive age.

To date, every state with, the exceptions of Alaska and Wyoming, has fish consumption advisory efforts occurring. Some states, such as Idaho, develop individual advisories for water bodies. Thirty-one states have statewide fish consumption advisories with 24 of them being specific to mercury.

Idaho Fish Advisories:

In 2001, the Idaho Fish Consumption Advisory Project (IFCAP) was established. IFCAP allows the Department of Health and Welfare, in partnership with the Governor**'**s office, Idaho Department of Environmental Quality (IDEQ), Idaho Department of Fish and Game (IDFG), Idaho Department of Agriculture, US Geological Survey (USGS), and EPA, to determine what the public health risks are in Idaho from consuming locally caught fish.

To date, this has been a very cooperative and opportunistic relationship because there are no funds for this program and because there is no specific statutory responsibility for any agency to issue fish advisories. Each agency involved has been working on this as part of something else they do routinely, or because they feel it is an important issue to address.

The IFCAP is designed to encourage the public to:

- Check for advisories;
- Keep only those fish that are deemed safe for consumption for the water body from which they were caught;
- Clean and cook the fish in a manner consistent with the advisory;
- limit consumption of fish from certain water bodies as detailed by the advisory; and
- Understand that fish is an important part of a balanced diet and that the public should continue to eat fish from Idaho waters while observing the consumption advisories.

IFCAP Protocols: (see handout)

IFCAP identifies the locations for sampling, designs the survey process, performs and reviews the analysis, agrees on the criteria for issuing an advisory, and cooperatively informs the public. In summary , JFCAP:

1. Identifies the sites for sampling on the basis of the likelihood of mercury and other contaminants being present and knowledge that the water body is actively used for sport and/or subsistence fishing. However, in the past many of the sampling was conducted at the sites already being evaluated by IFCAP partners.

2. Determines the species of fish to be collected based on reports from IDFG as to what species are most commonly caught and kept for consumption. Typically the sampled fish are sport fish (trout, crappie, walleye, bass) and bottom-feeders (bullhead, catfish). Sampled fish have to be of legal size limit and species that can be legally taken from the waters.

- Ten fish from each species need to be collected in order to perform a valid analysis.

3. Relies on sampling of fish to be done by IDFG and USGS. After collection, the fish samples are shipped to a laboratory certified to perform the analysis — typically the State Public Health Laboratory.

4. Assures the results of the laboratory analysis are reviewed by the IDHW State Public Health Toxicologist to determine if an advisory is warranted.

- The geometric mean of all fish collected in a species is used to calculate the dose for each population (general public, women/pregnant women, and children). If 9 fish meals per month puts the population group above the EPA reference dose of 0. lug/kg body weight, an advisory is issued.

5. Assures that information is disseminated to the public via a news release, posting of materials (typically laminated signs posted at the water body at points of access, such

as boat launches by IDFG or other IFCAP partners -see example from American Falls Reservoir), the IDHW Web site, and IDFG*s fishing regulations.

Where have fish advisories been issued? (see map/chart)

Fish advisories have been issued at the following water bodies in Idaho:

- C.J. Strike Main Reservoir – 2002 for Mercury
- Brownlee Reservoir – 2002 for Mercury
- East Mill Creek – 2002 for Selenium
- Salmon Falls Creek Reservoir – 2003 for Mercury
- Lake Coeur d*Alene – 2003 for Lead, Arsenic, and Mercury
- Lake Lowell Reservoir – 2003 for Mercury
- Lake Pend Oreille – 2005 for Mercury
- American Falls Reservoir – 2006 for Mercury
- Priest Lake – 2006 for Mercury

Note:

Oregon has an advisory for the Owyhee River and Reservoir which flow through Idaho. They also issued an advisory for Brownlee Reservoir. Both of these are for Mercury

Summary:

In summary, methylmercury is the form of mercury that is primarily of public health importance because of its bioaccumulative and persistent effect and its adverse effects on the nervous system and development in fetuses and young children. Consistent with the majority of states, Idaho has developed a fish consumption advisory project. While this project is unfunded and unmandated, partners have developed a protocol for identifying water bodies, sampling and analyzing fish caught in those water bodies, and for determining if a fish consumption advisory should be issued.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 16, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:13 p.m. and welcomed the guests in attendance.

GUBER-NATORIAL APPOINTMENT: **Janet Penfold** of Driggs, Idaho, was reappointed by the governor to the **State Board of Health and Welfare** to serve a term commencing January 1, 2006 and expiring January 1, 2009. She spoke to the committee on February 15.

MOTION: **Senator Broadsword** moved to send the reappointment of **Janet Penfold to the Board of Health and Welfare** to the floor with a **Do Pass** recommendation. **Senator Darrington** seconded the motion. The motion carried by a **voice vote**. **Senator Broadsword** will sponsor the appointment on the floor.

S 1390: **Senator Compton** introduced **S 1390**, **relating to Medicaid**. This bill allows for in-home care providers to have assistance when they need time off. It runs concurrent with Medicaid reform because it keeps disabled and elderly individuals with special care needs in their own home. The Department anticipates no fiscal impact because it will prevent individuals from going into nursing homes when their care-provider needs time off or burns out. As a result, it should be fiscally neutral.

Senator Werk stated that there may be a time-lapse between the implementation of the bill and the point at which the Department sees the benefits, in terms of keeping people out of nursing homes. He said there may need to be funding to cover this time lapse.

Senator Compton reiterated that it is one step in a string of bills which are part of Medicaid reform. A recommendation was made to amend the bill based on a consistency concern.

MOTION: **Senator Werk** moved to send **S 1390** to the 14th order. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Werk** will sponsor the bill.

S 1389: **Senator Stegner** introduced **S 1389, relating to Regional Mental Health Services**. This bill stems from the work of the Mental Health Subcommittee which met at length over the summer. It codifies a state planning council on mental health, adds to the list of services offered including the addition of transitional housing for adults and juveniles, and it recommends the creation of additional Assertive Community Treatment (ACT) teams.

Senator Compton asked about comments made by judges on why transitional housing is so important, and **Senator Stegner** explained that transitional housing gives individuals an intermediate place to go between an institution and home which allows them to ease into society better.

Senator Stegner spoke on the successes of ACT teams. S 1389 also allows the state to develop a grant program to focus on transitional housing and access to psychiatric beds. This year, the subcommittee recommends a $4 million appropriation to fund the regional grant program established in this legislation. If JFAC fails to appropriate this money, the legislation will have no fiscal impact to the state. He encouraged that the bill go forward with or without the funding.

Senator Broadsword asked why the term on the planning council was just two years, and **Senator Stegner** said there had been no significant discussion about changing the current practices of the council, which he said he believed the two year term to be.

There was discussion about the Mental Health Planning Council and how it is funded.

Senator Werk asked if the $4 million had been requested as part of the Department of Health and Welfare request, and **Senator Stegner** said it was not. He said he would be willing to negotiate.

Senator Keough asked whether the people serving on the planning council currently would be reappointed to the council once the restructuring takes place, and **Senator Stegner** said he believed so.

The committee discussed the reasons some counties are more involved in the ACT team process, etc. and how the differing involvement levels is advantageous because it fosters competition for establishing leadership.

Senator Kelly asked about the overlap between substance abuse courts and mental health courts. **Senator Stegner** said substance abuse and mental health are virtually inseparable. He said 60-80% of individuals with mental health issues also have substance abuse problems, and 80-90% of suicide attempts coincide with substance abuse dependencies. The only reason he said he sees that the two issues are dealt with separately is because their funding comes from two separate sources. The subcommittee is looking at ways to merge the two systems.

MOTION: **Senator Werk** moved that **S 1389** be sent to the floor with a **Do Pass** recommendation. **Senator McGee** seconded the motion.

Senators Darrington and Compton commended the subcommittee for

their work and perseverance on this issue.

The motion carried by a **voice vote**. **Senator Stegner** will sponsor the bill on the floor.

SPEAKER: **Russ Barron, Administrator, Division of Welfare, Department of Health and Welfare** updated the committee on **Idaho's Child Support Program.** (See Attachment #1,Testimony)

Senator Darrington referred to the 1988 passage of the Federal Reform Act, which had a sunset that was repealed in 1997. He asked if there are still guidelines which are rebuttally presumptive, and **Russ Barron** said the guidelines are still used and the Department is also under federal regulations.

Senator Broadsword asked whether employers can make child support payments online when they are ordered by the court to make those payments, and **Russ Barron** said they can if they use a credit card.

Senator Compton asked about the computer systems used by the Division, and **Russ Barron** explained the advantages a modernized system would bring to the Department.

SPEAKER: **Kandee Yearsley, Program Manager, Child Support Program,** spoke to the committee on the challenges the Child Support Program has faced in the past few years and the in the future. (See Attachment #2, Testimony). A booklet on the program is also included (Attachment #3).

Senator Darrington asked how many states are in a compact and how new the compact program is. **Kandee Yearsley** said 54 states and territories are involved, and although they were supposed to be involved earlier, they have just come online recently.

Senator Brandt thanked **Kandee Yearsley** for her help with constituents and her service in her position. He asked about a legislative advisory committee which he used to sit on. **Kandee Yearsley** said the committee is no longer active but the Department would like to form a new committee like it. **Senator Brandt** endorsed the idea.

ADJOURN: There being no further business, the meeting adjourned at 4:25 p.m.

MINUTES: **Senator Broadsword** moved to approve the minutes from February 13. **Senator Werk** seconded the motion. The motion carried by a **voice vote**.

INTRODUCTION: **Senator Compton** introduced **Ashley Burke**, from Sagle, Idaho, who will be the page for the second half of the legislative session. She is

sponsored by **Senator Broadsword**. **Chris MacMillan**, the page from the first half of the session, thanked the committee for his experience and said he learned a lot from the committee members. The committee wished him well as he graduates and prepares for college.

ADJOURN: There being no further business, the meeting adjourned at 4:25 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Presentation to the Senate Health & Welfare Committee
Child Support Program Update
February 16, 2006

Good afternoon Mr. Chairman and members of the committee. My name is Russ Barron; I am the administrator for the Division of Welfare. I appreciate this opportunity to provide an update on Idaho's Child Support Program.

First, I will provide you with some brief background information on the National Child Support Program. Then I will discuss some information specific to Idaho's Program. And then Kandee Yearsley will be providing some information on how we have approached our current challenges, and she will talk about the challenges we face in the immediate future.

The National Child Support Program was established in *1975:*

- It is authorized by Title IV-D of the Social Security Act, and that is why it is commonly referred to as the IV-D Program.
- The original purpose for the program was to make absent parents responsible for the expenditure of public assistance dollars.
- The Child Support Program is funded through the TANF block grant.
- The Federal Office of Child Support Enforcement (OCSE) is part of the Administration of Children and Families (ACF) within the Department of Health and Human Services (DHHS).
- Each state is required to have a IV-D Director, and Kandee Yearsley is doing a great job of fulfilling that role in Idaho.
- The Federal Office of Child Support Enforcement in cooperation with State Child Support Directors developed a 4 year strategic plan; a copy of the plan has been provided to you. States have some flexibility in the way they manage the Child Support Program, and this plan helps states align with the goals of the National Program.
- State IV-D Directors are members of The National Council of Child Support Directors. The Directors meet regularly, working together to align state programs as much as possible to meet the needs of the individuals they serve.

Idaho's Child Support Program promotes the physical and economic health of families by working to ensure that parents are financially responsible for their children. Child Support

works closely with the TANF (cash assistance), Food Stamps and Medicaid Eligibility programs. In Idaho, when single parent families apply for these benefit services they also receive Child Support services. The goal of the child support program is to provide a reliable source of income for families which can reduce their need to rely on benefit programs.

The amount of Child Support to be paid is established judicially (by a court order), or administratively. Idaho is a judicial state which means we rely on the courts for establishing or modifying orders and also for some enforcement actions such as contempt.

Child Support can be determined in private divorce decrees, or it can be determined in Child Support Orders in those situations where the parents are not married. The amount of support to be paid is determined by considering the income of both parents. In Idaho, our staff work with a total 21 attorneys statewide to establish paternity, child support, and medical support. Most of the attorneys are on contract with the state, and a few are with the Attorney General**'**s office. These attorneys are also used to modify orders through the courts.

Establishing paternity is an important function of the program. Genetic testing services are contracted and the cost is passed on to customers. Once genetic testing is accomplished, a court order must still be obtained.

The role of the Idaho Child Support Program is to establish and enforce court-ordered support by using available enforcement tools. These tools include wage withholdings, liens, tax offsets, and in situations of last resort:
license suspension and financial institution data match. Financial Institution Data Match is the process of matching parents who are delinquent in their support obligation with their financial accounts, and then seizing those assets for payment of child support.

We appreciate the support we have received from the Legislature. In 2004, you passed legislation that permitted the administrative procedure for Financial Institution Data Match (FIDM). Using the administrative process for FIDM since that time we have collected almost $580,000. This is money for families who hadn**'**t received regular child support payments, and in many cases hadn**'**t received any payments for years. Prior to the administrative process we had only collected $1800.00 in 3 years.

Also, as a result of the last legislative session, 15 positions were restored to the Program and in a moment Kandee will explain how these positions helped us make some changes in the business.

In FFY 2005, Idaho**'**s Child Support Program:

- Administered over 119,000 cases
- Collected and distributed more than $163 million

- Received over $2 million in payments through the website from individuals who use it as a convenient way to make their monthly payments and from individuals who don*t make regular payments.
- Our cost effectiveness is one of the best in the nation. In FFY 2005, for every 1 dollar that the program spent, $5.58 of Child Support was collected.

The 2005 rankings aren*t available: but in 2004 Idaho ranked 31st out of 54 States and territories in collections. We collected support in *52%* of our cases which was above the national average.

Appropriate staffing remains a challenge. Child Support currently employs 165 staff statewide. In 2001 we employed 181 staff. Our caseload has grown by over 35% since 2001. Idaho has one of the highest caseload to staff ratios in the nation. We receive an average of 550 new child support cases every month.

Child Support arrears remain a serious challenge for all states. Nationally, over $1 trillion in back child support is owed. This amount increases each year by over $102 billion. At the end of FFY 2005, Idaho*s child support arrears balance was $426M. This amount increases at a rate of approximately $20M per year. Idaho has maintained the annual rate of increase even though the average, statewide caseload increases by approximately 8% per year. This equates to an average of *550* new cases per month.

We recognize that many times your constituents contact you for help in resolving their child support issues. We know that it is difficult to please everyone when dealing with broken relationships, children, and money, and we are working to decrease the number of contacts you receive. We are conm-iitted to doing our job of ensuring that accurate and timely actions occur. Sometimes the issues are complex and cannot be immediately remedied because further legal action is required for modification of the order, or for contempt actions. Although the Child Support Program does not have the legal authority to make any changes to a court order, we will do what we can to help individuals through the judicial process to ensure that individuals are paying and/or receiving the appropriate amount of child support.

Over the past few years we have looked for ways to improve performance in the Child Support Program by helping parents be successful in meeting their obligations to their children. I have asked Kandee Yearsley to talk about some of the specific changes the program has made to keep up with increasing caseloads while trying to improve overall performance. She will also discuss the challenges we face now and in the near future.

With your permission, Mr. Chairman, I would like to introduce Kandee Yearsley.

Kandee

Good afternoon Mr. Chairman and members of the committee. My name is Kandee Yearsley and I am the Child Support Program Manager. I appreciate the opportunity to provide you an overview of where the child support program is today and what we see for the future.

The Child Support Program has faced many challenges in the past few years. We had performance issues such as backlogs and legislative audit findings and we knew that we had to make changes to our practices and procedures if we wanted to provide quality service to our customers. As we looked at our system it became clear that we needed to first look at who we serve. Our customers needed to include both parents if we wanted to be successful, though traditionally, child support worked for the custodial parent. That practice wouldn**'**t work for the future.
Russ referenced constituent calls and their concerns. We understand that there are parents who run from their obligations, but most parents want to support their children but don**'**t have the resources. We needed to look at what we could do to help them be successful. We established a work service program. Using contractors we help those who need assistance with work readiness and training which increases their ability to meet their obligation to their children.
We realized we needed to work as a statewide business, in areas where we could consolidate work without impact to the customer. With the continually increasing caseloads, we needed the ability to do our work more efficiently and effectively.

We have now implemented consolidated units throughout the state. For example, we have a single statewide locate unit in Lewiston which now ia specializes in locate work not only for child support but also for other
programs such as Family and Community Services. We have a consolidated license suspension unit in Pocatello providing service to customers statewide. This has allowed us to provide standardized, consistent, and
efficient service. We have also consolidated our FIDM unit. Russ gave you the collection numbers but the successes are much greater than the numbers. One mother in northern Idaho received $22,000. She couldn**'**t believe it, her children are now grown and she had given up on ever receiving any money. She planned to use the money to catch up on things that had been let go over the years to raise her family. She was still owed $29,000, and after we attached the first amount, the non custodial parent decided to pay the balance in full. We were able to send her another $29,000.
Another Boise mother received $8000.00. Her child was also grown and off to college. She

put the money into a college fund for her son, something she said she never could have done without the child support program.

With the size of Idaho**'**s Child Support program, and limited staffing, we recognized the need to have contracted services to provide the best service delivery possible.
Policy Studies Incorporated provides some of these services our 800-customer service line which averages 13,000 calls per month, our receipting services for all payments made by mail which processes an average 52,000 receipts per month, and a financial audit (account accuracy) unit which audits approximately 400 financial records per month.

Our Current Challenges

- Legislative Audit findings head the list in current challenges
  - We currently have two outstanding findings.
  - First we have a finding regarding our failure to meet interstate case timelines. Interstate cases are a struggle for all states. Over the past two years Idaho has participated in a federal interstate case reconciliation project to improve interstate cases nationally. Idaho currently has approximately 23,000 interstate cases.
  - These are cases where one parent resides in another state and we rely on that state to use their enforcement methods to collect child support or when Idaho provides service for another state when one parent resides in Idaho. Interstate cases are directed by the Federal Uniform Interstate Family Support Act (TJIFSA). Federal timeframes mandate we initiate a outgoing interstate**'**s within 20 days from the date we know the parent resides out of state; and mandates a 5 days response to any request from the other state on interstate cases.

    When we looked at our interstate process we realized these cases could be better served if we consolidated the services provided. We are now in the process of consolidating interstate

- cases in two statewide units. One unit is in our Caldwell office and one in our Lewiston office. The consolidated units have already begun to provide standardized processes, and improved customer service to the states and individuals we serve as we strive to improve the performance.

- Another legislative audit finding is in regards to our financial account accuracy. Child Support maintains financial records on approximately 75,000 cases. (the balance of the cases are waiting for orders to be established) The legislative audit reported that Child Support accounts were not accurate. Staff were not able to keep up with the caseload growth, and the result was 3 out of 4 cases had inaccurate account balances. From a compliance perspective we saw this as a problem, but from the perspective of a family or individual

paying or receiving child support it was unacceptable. We realized the importance of a case set up. A case must be correct from the beginning so we established a statewide consolidated order and debt set-up unit in Pocatello. This unit has standardized the process of case and debt set up which will improve our financial performance for the future. We continue to contract approximately 400 financial record reviews per month to Policy Studies to improve the accuracy of the cases a]ready within the child support system.

- Modification of support orders. Currently as Russ noted we have a judicial process. An administrative process would allow Child Support to expedite the modification process on cases where there has been a substantial change in circumstance. This would allow Child Support to be pro-active in helping non custodial parents in getting the correct amount of support ordered.
- Recodification of Child Support Statutes. Currently Idaho child support related statutes are throughout the Idaho code and it is difficult for our customers including attorneys to find them. Through recodification, moving them to one section, it would make Idaho code more efficient.
- One of the functions of child support is to secure health insurance for children when available through employment of the custodial or non custodial parent. Our ability to secure insurance for children has the potential to impact the Medicaid program. In the near future this will become a national measurement for the success of Idaho*s child support program. By focusing now, Idaho will be prepared when medical support becomes a performance measure.

Our major challenge for the future is the Deficit Reduction Act of 2005. We still don*t have a clear picture of all the impact to Idaho*s child support program but we are concerned.

- Child Support is one of the few programs within the State where the program performance determines a portion of its funding. In 2005, approximately 11% of the program*s funding was based on 2004 program performance. With the passing of the Federal Deficit Reduction Act of 2005 the Child Support Program will no longer be able to federally match incentive dollars received.
    - Beginning in October 2006 states will be required to pay a *$25.00* annual fee to the federal government on all never TANF cases. We are waiting for further definition from the federal government before we know the impact to our program.

    - Beginning FFY 2008 the National Child Support Program*s federal funding will be cut approximately $2.4B over a five year period.

    - Idaho will lose approximately $2.2M annually or $1 1M in that same five

year period which will have a significant impact on the customers we serve.

Again I would like to thank you for this opportunity. Idaho*s Child Support program works daily to contribute to the lives of Idaho families. We are working to make changes within our program to ensure continued quality service in the future.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 20, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:04 p.m. and welcomed the guests in attendance.

MINUTES: **Senator Broadsword** moved to approve the minutes from February 15. **Senator Coiner** seconded the motion. The motion carried by a **voice vote**.

Senator Coiner moved to approve the minutes from February 14. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**.

HCR 34: **Brad Hoaglun**, representing the **American Cancer Society**, presented **HCR 34, stating findings of the Legislature concerning the impacts of colon cancer on the citizens of Idaho and declaring the month of March as "Colorectal Cancer Awareness Month."** He introduced his son, Tyler, in the audience.

Brad Hoaglun explained that the American Cancer Society promotes prevention and early detection. It is important for men aged 50 and older to be screened for this type of cancer, and by dedicating March to promoting awareness of the cancer, the Society hopes to encourage more screening, which will ultimately save lives. He explained how polyps can be detected during screening and removed to prevent the onset of cancer. The Society anticipates 540 new colon cancer cases to arise in Idaho in 2006. In 2004, 194 Idahoans died of colon cancer, which is tragic because it is a preventable disease.

Senator Broadsword commented that although the fiscal note indicates no fiscal impact, it could save the state money if the disease can be prevented in people who would need state monies to fund their treatment.

Senator Compton asked whether Medicaid covers the test, and **Brad Hoaglun** said no. **Senator Compton** then asked whether Medicaid would cover the test if a physician recommended it, and **Brad Hoaglun**

said if the individual was at high risk, they would have to take special steps to get permission for it to be covered.

Senator Compton asked if Blue Cross and BlueShield cover the tests, and **Brad Hoaglun** said they do.

Senator Werk asked how many Medicaid patients were diagnosed with colon cancer last year, and **Brad Hoaglun** said he did not know, but upon **Senator Compton**'s request, he said he would get that information for the committee.

Senator Compton asked if Medicare covers the screening, and **Brad Hoaglun** said it does. They discussed the advertising campaigning for the cancer which will come in March.

Lyn Darrington, representing **Regence BlueShield of Idaho,** testified in support of the resolution. Anytime awareness is raised for cancer screenings, it saves the industry money. She said BlueShield usually covers the screening in full, subject to the terms of the contract pertaining to copaying and deductibles.

MOTION: **Senator Keough** moved to send **HCR 34** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion.

Senator McGee remarked that although he is probably the youngest member of the legislature, he is also the highest at risk of getting this form of cancer due to a condition which he has called ulcerative colitis.

The motion carried by a **voice vote**. **Senator McGee** will sponsor **HCR 34** on the floor.

ADJOURN: There being no further business, the meeting adjourned at 3:24 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 22, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Harper, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:07 p.m. and welcomed Senator Harper, a chiropractor from Orofino, who is acting on behalf of Senator Brandt.

S 1412 **Kris Ellis**, representing the **Idaho Assisted Living Association**, introduced **S 1412, relating to Pharmacists**. Her testimony is included as an attachment (Attachment #1). She stated this bill results from two years of discussion between the Board of Pharmacy, the Pharmacy Association, Idaho Health Care Association, Board of Nursing, and the Idaho Medical Association. It allows for verbal and facsimile transmissions of prescriptions from health care facilities to pharmacists. It also re-alphabetizes the statute. The additions to the statute include the definition of a health care facility, an expanded definition of prescription drug orders, and the permission to transmit prescriptions electronically when in compliance with the Uniform Electronic Transmission Act (UETA). She recommended the bill go to the amending order due to an error by legislative services.

Senator Broadsword asked if a pharmacy technician can take a called-in prescription. **Mick Markuson, Executive Director of the Idaho State Board of Pharmacy,** said that a pharmacist is the only person who can take a verbal order for a prescription.

Senator Broadsword asked if the bill allows prescriptions to be ordered by email, and **Kris Ellis** indicated in the text how the bill could be interpreted to allow email orders.

There was discussion about how verbal orders work currently and under the new bill.

JoAn Condie, Executive Director, Idaho State Pharmacy Association, explained that pharmacy technicians are allowed to take a refill order, but not a new prescription order. The Board of Directors suggested additional wording which would attach a name to every fax in order to transmit

prescriptions efficiently, and as a result of the suggestion, the wording was added. The Board is neutral on the bill.

Senator Harper commented on electronic signatures and expressed concern that unclear faxes might hinder accuracy.

Senator Werk asked about a reference to Idaho Code and discussion followed.

Senator Broadsword asked why assisted living facilities are treated differently than physicians' offices are. **JoAn Condie** explained that everyone working in a physician's office is an agent of the physician, whereas not everyone working at an assisted living facility is an agent of the facility. Discussion ensued. **Mick Markuson** commented that the term "agent" is a gray area because it is undefined.

MOTION: **Senator Broadsword** moved to send **S 1412** to the amending order. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Coiner** will sponsor the bill.

UPDATE: **Mick Markuson** updated the committee on successes which the state of Oregon has had in classifying pseudoephedrine as a schedule III drug.

S 1413 **Senator Darrington** introduced **S 1413**, relating to **Honorariums and Expenses**. The bill came out of the Idaho Council for Children's Mental Health (ICCMH) which is funded by a six year federal grant. Because the grant money is not fully utilized, this bill would allow for stipends, or honorariums, to be granted to the volunteers in order to keep them involved. Because it is federally-funded, there is no impact to the general fund. Sections (a) through (p) outline options for which amount of compensation a region could to apply, ranging from nothing to $100.

MOTION: **Senator Werk** moved to send **S 1413** to the floor with a **do pass** recommendation. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**. **Senator Darrington** will sponsor the bill on the floor.

ADJOURN: There being no further business, the meeting adjourned at 3:40 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

SB 1412 Testimony

Kris Ellis, Idaho Assisted Living Association

This legislation is brought to you after 2 years of discussions between many affected parties including the Board of Pharmacy, the Pharmacy Association, the Idaho Health Care Association, the Board of Nursing and the Idaho Medical Association.

Simply put this bill allows for verbal and fascimille transmission of prescription drug orders. However, as you look at this legislation it looks much more complicated. Legislative Services while opening the statute has taken the opportunity to re-alphabetize the definitions. I will talk specifically about the additions to the statute.

1. Page 3 Lines 6-7 Defines a "Health Care Facility" This definition is from the nursing home statute and includes facilities that are licensed by the state including nursing homes, hospitals, and assisted living facilities.

2. Page 4 Beginning on Line 39 Clarifies the definition of a prescription drug order to include
    a. the original prescription from the practitioner
    b. a verbal order from a practitioner and;
    c. a verbal order put into writing by a licensed or professional nurse in a health care facility.

3. Page 5 Beginning on Line 42 gives details to prescription drug orders and what constitutes a valid prescription drug order.
    (a) allows for electronic transmission of prescriptions when it complies with the Uniform Electronic Transmission Act.
    (b) Details how the prescription drug act may be transmitted to the pharmacist.

1. original prescriptions can be faxed from the facility. This would occur when a resident of the facility goes to the doctor, dentist, etc and returns with a prescription in hand. The facility could fax this.

2. the practitioner or his agent or a licensed or practical nurse can phone in an order to the pharmacist.

3. this is the crux of this statute and is really a safety issue. As you know there are many drugs with similar names and a dosage could be 5 milligrams or .5 milligrams. Presently giving a verbal order to a pharmacist is the only option available for nurses in health care facilities. This change will allow them to transcribe a phone order, then fax it. This also requires the nurse to sign her name with license number and also requires of the name of the person who sent the fax.

(Attachment #1)

Mr. Chairman, members of the committee there is an error in this bill on line 52 of page 5 the word pharmacy needs to be changed to pharmacist. This was discussed with the pharmacy association during negotiations but got overlooked during the final drafting. For this reason would ask that SB 1412 be sent to the 14th order.

Mr. Chairman members of the committee this legislation will help ensure that residents of health care facilities receive there medications and receive the correct medications. As always the pharmacist can and does verify each prescription drug order they are not comfortable filling. I would appreciate your support.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 23, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Harper, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Darrington

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:12 p.m. and welcomed the guests in attendance.

MINUTES: **Senator Werk** moved to approve the minutes of February 20. **Senator McGee** seconded the motion. The motion carried by a **voice vote**.

SCR 124: **Robert Vande Merwe, Executive Director, Idaho Health Care Association,** introduced **SCR 124, stating findings of the Legislature and requesting the Department of Health and Welfare to develop an Informal Dispute Resolution Process which is partially independent from the Department for Intermediate Care Facilities.** He stated this resolution relates to intermediate care facilities for the mentally retarded. The Department of Health and Welfare surveys these facilities similar to how it surveys assisted living facilities. In nursing facilities, there is an informal dispute resolution process for the facility to use to appeal judgments made during inspections. This process has been helpful to nursing homes, and the Association is asking for the same process to be developed for intermediate care facilities. This resolution would encourage the Department to begin negotiations for developing the process.

Senator Kelly asked whether the Department could develop this process on their own, and **Robert Vande Merwe** stated they could but they haven't. **Senator Kelly** asked whether there is an appeals process already in place for in the administrative procedures and agency rules. **Robert Vande Merwe** stated there was, but expounded on the importance of an independent, impartial entity to conduct the process.

Senator Compton asked why no one from the Department was present to testify on the bill, and **Robert Vande Merwe** stated that he informed them about the hearing, and the Department was at the print hearing, but no one showed up today. **Senator Compton** commented on the importance of having all parties present to make this decision.

MOTION: **Senator Werk** moved to hold **SCR 124** until a time certain subject to the call of the Chair. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

DISCUSSION: **Senator Broadsword** asked whether fiscal impact statements are required for resolutions, and discussion followed. **Robert Vande Merwe** stated the Department says they will need money to staff the process, but he feels they do not need more staff, so there should not be a fiscal impact.

Senator Harper, acting on behalf of **Senator Brandt**, thanked the committee for his experience this week as a senator.

ADJOURN: There being no further business, the meeting adjourned at 3:25 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 27, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Vice Chairman Broadsword

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:07 p.m., a quorum being present. He welcomed the guests in attendance, and announced a change to the order of the agenda as follows.

HCR 31 **Representative Kathie Garrett** introduced **HCR 31, Stating Findings of the Legislature and Acknowledging the Seriousness of Suicide by Endorsing Idaho's Suicide Prevention Plan and Supporting said Plan's Comprehensive Approach.** She stated Idaho's suicide rates are among the highest in the nation. She spoke about the hazards of suicide in terms of loved ones left behind and futures lost. The Suicide Prevention Plan was developed by First Lady Patricia Kempthorne and Representative Margaret Henbest to address the suicide crisis. The Plan serves as a guide for agencies, organizations, communities, and individuals to develop their own strategies. **HCR 31** states that the legislature recognizes the seriousness of Idaho's suicide crisis and the importance of prevention. Through this resolution, the legislature shows support for a comprehensive approach to reduce suicides. It is not a mandate or a requirement to spend money, but it is a reaffirmation of the value of individual lives in the state.

Senator Werk asked why Idaho's suicide rate is so high, and **Senator Compton** concurred with the question. **Representative Garrett** explained that many factors contribute to the rate, and one major component is that Idaho may lack adequate treatment programs for mental illness and substance abuse problems.

Peter Wollheim, Professor, Boise State University, and Executive Director, Idaho Suicide Prevention Services, testified in support of the legislation. He operates a suicide prevention hotline which has taken more than 54,000 calls since he came to Idaho 17 years ago. Seven percent of the calls received are medical emergencies. The hotline has a 95% success rate of preventing death. Most individuals who use the hotline are white females ages 28-45, who are mothers with children, but most individuals who complete suicides in the state are older white males.

He explained the difference between those who attempt suicide and those who complete it. For every person in the U.S. who completes a suicide, there are at least 500 people who attempt it. For each adolescent who dies of a firearm injury to their head, 5,000 will survive, usually with brain injuries.

Dr. Peter Wollheim stated one contributing factor to suicide completion seems to be race, in that African-Americans, Asians, and Hispanics attribute family as a reason to stay alive, whereas white Anglo-Saxon Protestants tend to have a very individualistic outlook which facilitates suicide completion. Access to firearms is a second significant contributing factor, because firearms are much more lethal than other methods of self-harm. The economy is also a contributing factor, as is a lack of access to mental health care. Finally, stigma contributes because older white males tend to struggle to admit a need for help. By highlighting suicide as a public health issue, he said he hopes to create an open dialogue to reduce some of the stigma and to encourage loved ones to report on behalf of a suicidal relative.

Senator Darrington asked whether gun deaths are on the increase, and **Dr. Peter Wollheim** said they are not.

Senator Darrington asked whether coroner reports which list the cause of death as being accidental could actually be suicides. **Dr. Peter Wollheim** said yes, especially because there is no standardized coroner's report in Idaho. Coroners are often encouraged not to diagnose a death as a suicide unless 100% certain.

Senator Compton asked how rural Idaho can access the hotline, and **Dr. Peter Wollheim** explained that they distribute small purple-ribbon information cards to every school child in the state.

Dr. Kirby Orme, retired physician, President of Idaho's Suicide Prevention Action Network (SPAN Idaho), testified in support of the resolution. He referred the committee to a list of Idaho suicide statistics which has been included as an attachment (Attachment #1, Chart). He shared with the committee the experiences he and his wife have had in losing children to suicide. He explained that no one group can move this plan along, but with collaboration between many state, federal, and private sector agencies, this public health issue can be addressed by increasing the normality of seeking mental health help. In 2000, the National Institute for Mental Health, Substance Abuse Institute, Veterans' Administration, and the Center for Disease Control (CDC) commissioned a study through the National Institute of Medicine which produced the text on which Idaho's Plan is founded.

Senator Darrington asked whether it is true that a suicide breeds other suicides, and **Dr. Kirby Orme** said it is both true and false. Much depends on how the media handles it.

Senator Brandt showed the committee some purple-ribbon cards which **Dr. Peter Wollheim**'s organization distributes and commented on how he has utilized them to help people since the loss of a friend in 2003.

Kim Kane, Executive Director, SPAN Idaho, testified in support of the resolution. She provided an executive summary of Idaho's Prevention Plan (see Attachment #2) along with a comprehensive booklet on the Plan (Attachment #3). She said 15-17 year old Native Americans, and white males ages 75 and over, have the highest suicide rates. She explained the Plan to the committee, including its structure, goals, objectives, and projected outcomes. She also explained how the Plan would work specifically in rural areas.

MOTION: **Senator Werk** moved to send **HCR 31** to the floor with a **do pass** recommendation. **Senator Keough** seconded the motion. The motion carried by a **voice vote**. **Senator Brandt** will sponsor the bill on the floor. **Senator Compton** thanked the professionals who presented to the committee.

RS 16148
RS 16149
RS 16150

Senator Darrington explained that **RS 16148, Stating Findings of the Legislature and Rejecting Pending rules of the Idaho State Board of Dentistry, RS 16149, Stating Findings of the Legislature and Rejecting Pending Rules of the Department of Health and Welfare Governing the Medical Assistance Program,** and **RS 16150, Stating Findings of the Legislature and Rejecting Pending Rules of the Idaho State Board of Dentistry,** are decisions which have been made by the committee on rules.

MOTION: **Senator Darrington** moved that **RS 16148, RS 16149,** and **RS 16150** be referred to the Judiciary and Rules Committee to print, accompanied by a letter from the secretary and signed by the Chairman. **Senator Brandt** seconded the motion. The motion carried by a **voice vote**.

H 564 **Roger Hales,** representing the **Bureau of Occupational Licenses, the Board of Optometry, and the Board of Psychology,** presented **H 564**, **relating to Optometrists. H 564** was proposed by the Board of Optometry and supported by the Bureau of Occupational Licenses and the State Treasurer. **H 564** eliminates a special account maintained by the Board of Optometry which is the only Board in the Bureau that has its own account. The separate account causes trouble because the licensing fees are split in half to go into two other separate accounts. To eliminate the account will not raise fees.

Senator Compton asked whether the Board of Optometry supports the change, and **Roger Hales** said it does.

MOTION: **Senator Werk** moved to send **H 564** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Werk** will sponsor the bill on the floor.

H 566 **Roger Hales** introduced **H 566, relating to Psychologists.** This bill raises the cap for licensing fees by $75 but does not raise the fees themselves. Presently, the Board of Psychology is spending more than it brings in and is being subsidized by the other boards overseen by the Bureau of Occupational Licenses.

MOTION: **Senator Coiner** moved to send **H 566** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion

carried by a **voice vote**. **Senator Coiner** will sponsor the bill on the floor.

MINUTES: **Senator McGee** moved to approve the minutes of February 22 with one correction. **Senator Darrington** seconded the motion. The motion carried by a **voice vote**.

ADJOURN: There being no further business, the meeting adjourned at 3:50 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Idaho s Suicide Prevention Plan

Executive Summary

Purpose of the Plan:

Idaho s suicide prevention plan is intended to be a guide for agencies, organizations, and individuals to follow at state, regional, and local levels when developing specific suicide prevention and mental health treatment action plans.

Priority Populations:

Although self-report data indicates that females in Idaho are almost twice as likely to attempt suicide as males, males are more likely to complete suicide. Using Idaho data, the four following groups were prioritized as highest risk for completed suicides:

Working aged males (18—64 years of age)
Elderly males (aged 75 years and older)
Teenaged males (15 — 17 years of age)
Native American teenaged males (15 — 17 years of age) Plan Format:

Idaho s suicide prevention plan is based on Idaho-specific needs and resources, with a format that mirrors the national plan. In addition to national goals, Idaho s plan also includes the development of the infrastructure needed to oversee plan implementation. The four categories are defined as:

Infrastructure — Goals, strategies and outcomes addressing the tangible framework need to secure resources, coordinate and provide information and assistance to organizations, agencies, and individuals working to implement goals and strategies in the plan.

Awareness — Goals, strategies, and outcomes addressing increasing knowledge on a wide-scale basis. Implementation — Goals, strategies, and outcomes addressing the programs and activities that are conducted to prevent suicides.

Methodology — Goals, strategies, and outcomes addressing program evaluation, surveillance, reporting, and research.

Plan Goals:

#1 Develop a central coordinating body for leadership in implementing suicide prevention efforts in Idaho. (Infrastructure)

#2 Increase awareness of suicide as a mental health issue in Idaho. (Awareness) #3 Identify, compile and disseminate best known practices and materials. (Implementation)

#4 Develop and disseminate guidelines for outcome and performance measurement for suicide prevention efforts. (Methodology)

#5 Identify statewide and local suicide-related needs and resources. Identify gaps in service and barriers to accessing care. (Methodology)

#6 Develop a systematic and repeated method of monitoring suicide-related attitudes, intentions and behaviors. (Methodology)

The complete plan can be accessed on line at:

http://www.sDanidaho.org, Click on Read Idaho s Suicide Prevention Plan
or
http://www.healthandwelfare.idaho .gov/_RainbowlDocumentslHealth/suicideplan.pdf

(Attachment #2)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: February 28, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:00 p.m. and welcomed the guests in attendance.

MINUTES: **Senator Broadsword** moved to approve the minutes of February 16. **Senator McGee** seconded the motion. The motion carried by a **voice vote**.

S 1417 **Senator Cameron** presented **S 1417, Relating to Medical Assistance**. He gave a brief overview of the Children's Health Insurance Program (CHIP) - B and Access Card programs, and he explained the difference between CHIP-A and CHIP-B. CHIP-B was designed to encourage individuals, especially children, to have health insurance. At about the same time, a pilot project was developed for adult insurance coverage through which small businesses and new employers were encouraged to offer benefits. It allowed for 1,000 adults to enroll. He distributed and explained a handout on enrollment which is included as an attachment (Attachment #1-Chart).

Senator Broadsword asked for a clarification about column one, row one of the graph on page two of the handout (Attachment #1, page 2), and **Senator Cameron** said the 763 individuals were adults who applied for the program but had no eligible children.

Senator Cameron stated that **S 1417** addresses two barriers which prevent children and adults from participating in the program currently. The first barrier is that under current law, if a child is eligible for Medicaid, he/she cannot be eligible for the Access Card. This bill would allow them to choose CHIP-A/CHIP-B/Access Card or Medicaid. The second barrier deals with the pilot project for adults. A provision currently exists which requires small business employers to pay 50% of the premium in order to participate in the program. This provision has proven to be stricter than what many insurance carriers require. **S 1417** removes the requirement so that if an employer wants to offer the group benefit package, it can be payroll deducted, and the state will subsidize through premium taxes. He

then explained how the program is funded. He listed several organizations which support the bill, including the Idaho Hospital Association, Blue Cross, Regence BlueShield, the Idaho Health Insurance Association, the Boise Chamber of Commerce, the National Federation of Independent Business, etc.

Senator Compton asked about coverage for spouses, and **Senator Cameron** explained that spouses were initially covered by the $100 card, and the employer would have to pick up the difference. It was too onerous for some employers, especially in combination with the 50% premium requirement, but with the removal of the requirement, more employers will likely be encouraged to cover spouses.

MOTION: **Senator Keough** moved to send **S 1417** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by a **voice vote**. **Senator Cameron** will sponsor the bill on the floor.

WELCOME: **Senator Compton** welcomed the student nurses from Boise State University who were in attendance at the meeting and commended them for choosing such a noble profession.

DISCUSSION: **Senator Compton** directed the committee to a copy of a proposed concurrent resolution (Attachment #2), and he asked **Senator Coiner** to begin discussion on it.

Senator Coiner said this resolution came out of discussions between the Department of Environmental Quality (DEQ) and legislators in an effort to address Idaho's mercury problem. The resolution is focused on mercury, and not on coal-fired power plants. He said that currently there are no dedicated funds and no organized program in any department or agency to research the issue. The plan is to develop a proposal over the summer and return next year with a request for funds. The proposal most likely would include a five-year study period to examine Idaho's water bodies and mercury sources. He pointed out that a resolution is limited because it can only make requests and recommendations, and it has no power to attain funds or speed up the process. The intent is to further knowledge on mercury as soon as possible.

Senator Compton asked about the timing components in the resolution, and **Senator Coiner** explained that within the next year, agencies involved in the issue would compile the data they already have about mercury in Idaho. The five-year plan would be a comprehensive study of all Idaho's major water bodies, etc., if by next year, the data collected prompts the need.

Senator Kelly explained that first, the resolution is to give DEQ, Health and Welfare, and perhaps Fish and Game some direction on what to report back to the legislature about in a year. At this point, the agencies are only able to compile already-known data within a year. The five-year plan is for original research. Second, the resolution deals with the federal mercury emissions cap-and-trade program and how DEQ should handle the issue pending their data compilation and analysis. She talked about how the cap-and-trade program works, briefly. The goal is to advise DEQ

to avoid opting into the program until the legislature has had a chance to assess the information on mercury. The last paragraph on the second page accomplishes this objective. Because it is a resolution, it is not binding on the executive branch so it is merely a suggestion.

Senator Compton commented that while it is true that resolutions do not bind the executive branch, in his experience he has never seen a department ignore one.

Senator McGee suggested that the resolution should lay out a wide variety of studies available to accomplish the objective.

Senator Broadsword expressed concern about the final paragraph directing DEQ to opt out before their study has been completed and the legislature directs them to opt in. She suggested that DEQ should neither opt in nor out until information is presented. **Senator Coiner** explained that states are automatically opted in unless they specifically opt out of the cap-and-trade program.

Senator Werk echoed the concerns expressed by **Senator McGee**, and commented that departments do not like being told what to do. **Senator Compton** explained that he has spoken to DEQ about the idea and they expressed support for following through on it.

Senator Broadsword asked if there would be a financial burden associated with the resolution. **Senator Coiner** said no fiscal impact goes with resolutions. Right now, DEQ, Health and Welfare, and Fish and Game are dealing with the issue out of discretionary funds.

Senator Compton concluded the discussion by stating that if everyone on the committee had agreed that the resolution had been crafted effectively, it would have been sent to print to have a full hearing on it.

Senator Werk asked how the committee thought they should effectively move forward on the issue. **Senator Compton** said that as the Chairman, he would take it on advisement and expressed appreciation for the discussion. He expressed hopes that more thorough information on the problem will come forth before final decisions are made.

ADJOURN: There being no further business, the meeting adjourned at 3:42 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

LEGISLATURE OF THE STATE OF IDAHO

Fifty-eighth Legislature Second Regular Session — 2006

IN THE SENATE

SENATE CONCURRENT RESOLUTION NO. ___

A CONCURRENT RESOLUTION

DIRECTING THE IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY TO PREPARE A REPORT ASSESSING THE NATURE AND EXTENT OF MERCURY CONTAMINATION IN THE ENVIRONMENT OF THE STATE OF IDAHO AND THE POTENTIAL ENVIRONMENTAL IMPACTS FROM THE ADDITION OF ANY NEW SOURCES OF MERCURY

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature recognizes that the presence of mercury contamination in the environment is of key concern to the public health, environment and economy of the state of Idaho;

WHEREAS, mercury contamination has been detected at levels of concern in the waters of the state;

WHEREAS, it is in the best interests of the citizens of the state for Idaho**'**s elected officials to make informed decisions regarding pollutants released into our environment and their effect on the health and safety of our citizens;

WHEREAS, the Idaho Department of Environmental Quality is specifically tasked with adopting and implementing programs to protect Idaho**'**s air and water quality and public health, and to ensure proper disposal of waste;

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-Eighth Idaho Legislature, the Senate and House of Representatives concurring therein, that the Idaho Department of Environmental Quality is directed to compile and assess the available information, conduct relevant studies, and prepare a Report which shall:

1. Identify existing sources of mercury contamination in the Idaho environment (including in-state sources, sources in surrounding states, national sources, and global sources);
2. Delineate the nature and extent of any known existing mercury contamination in the environment in the state of Idaho, including the status of all major water bodies in Idaho;
3. Describe the potential effect of the existing mercury contamination on public health and the environment; and
4. Assess the potential impacts of air pollution, water pollution and waste from the addition of any new sources of mercury in the state.

The report shall be submitted to the Governor and the Idaho Legislature no later than January 7, 2007. After the effective date of this Resolution, the Idaho Department of Environmental Quality shall promulgate an administrative rule specifically opting out of the mercury cap and trade program at 40 C.F.R. §60, Subpart HHHH. Upon review of the Report**'**s findings, the Legislature may direct the Idaho Department of Environmental Quality to take no action with regard to the administrative rule. In the alternative, the Legislature may direct the Idaho Department of Environmental Quality to revise the administrative rule to opt in to the cap and trade program, and may further direct the Idaho Department of Environmental Quality to promulgate a rule that, among other things, establishes specific limitations and monitoring requirements on mercury emissions.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 1, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:04 p.m. and welcomed the guests in attendance.

MINUTES: **Senator Coiner** moved to approve the minutes of February 23. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**.

HCR 40 **Representative Robert Ring** introduced **HCR 40**, **Stating Findings of the Legislature and Requesting the Department of Health and Welfare and the Office of the Attorney General to Develop a Statewide Universal System and Form for Physician Orders for Life-Sustaining Treatment and to Report their Proposals to the Legislature**. He stated that the resolution deals with Do Not Resuscitate (DNR) orders for individuals who express a desire for doctors and emergency personnel not to resort to heroic or extraordinary efforts in order to keep them alive. Currently, the state lacks a uniform system of orders to indicate this desire. **HCR 40** requests that such a universal system or form be developed.

Senator Darrington asked if there was a statewide compilation of data or registry where these forms are accumulated which has prompted a standardization of the form. **Representative Ring** stated that there is none, to his knowledge. **HCR 40** would minimize confusion by creating this form.

Senator McGee asked whether the resolution would preclude anyone from using a different form, as long as it is official. **Representative Ring** answered that none would be precluded.

Senator Compton asked whether the system could be computerized, and **Representative Ring** said he was not sure, but he assumed one of the directives in the resolution would be to determine how to administer the data.

Senator Broadsword asked if a person has to have a DNR order signed by a doctor if they already have a living will. **Representative Ring** said no, the two are separate documents and one neither precludes nor requires the other.

William A. Von Tagen, Office of the Attorney General, spoke in support of the legislation.

MOTION: **Senator McGee** moved to send **HCR 40** to the floor with a **do pass** recommendation. **Senator Coiner** seconded the motion. The motion carried by a **voice vote**. **Senator McGee** will sponsor the bill on the floor.

HCR 41 **Representative Margaret Henbest** introduced **HCR 41**, **Stating Findings of the Legislature and Encouraging the Development and Implementation of a State Website Portal to Assist Idahoans in becoming more Informed about Healthy Lifestyles and Available Health Care Options in Idaho**. In developing this resolution, she said her goal was to improve the transparency around pharmaceutical and physician costs. Patients do not always know what kind of quality care they should expect as they decide on their health care consumption. One way to bring transparency to the public is to show what the state spends on health care and pharmaceuticals for Medicaid clients and state employees, and this information would be easy to compile. The idea expanded into this initiative, and it was decided that a website should be constructed at health.idaho.gov where people could find answers to health-related questions and to find out about market rates for goods and services. The number-two reason people surf the web is for health information.

Senator Darrington asked about a part of the resolution which refers to a prediction that life expectancies are decreasing, and **Representative Henbest** said it is based on statistical research. Younger generations seem to be getting chronic diseases when they are on average 20 years younger than when their parents did. Lifestyle is also a contributing factor to the declining life expectancy.

Senator Broadsword asked who would maintain the website, and **Representative Henbest** said the Division of Health probably would. The Division already maintains a website that is not functional but could be utilized. It will take time to get the program rolling, but funding for a full-time position to maintain the site could be requested in the future. **Senator Broadsword** asked whether it would tie into the governor's programs on obesity, and **Representative Henbest** said it would.

Senator McGee recommended that **Representative Henbest** capture the web address before it is taken by another entity, and she said she would make sure that happens.

Senator Compton asked if this program is similar to other websites already functioning, and **Representative Henbest** said the Idaho site would link to many of these other websites so that the information is not duplicated but is highly accessible.

Senator Broadsword asked if information on pricing in the public sector

would prove difficult to attain. **Representative Henbest** explained that information on the state's spending will be a main source of information, and insurance companies may also be helpful in uncovering the information.

MOTION: **Senator Werk** moved to send **HCR 41** to the floor with a **do pass** recommendation. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**. **Senator Werk** will sponsor the bill on the floor. **Senator Compton** commended **Representative Henbest** on her hard work.

H 708 **William Von Tagen** introduced H 708, **Relating to Health Care Directive Registry**. He explained that this bill would create a living will registry, and he talked about the importance of having a living will readily available in the event of an emergency. This bill is designed to offer Idahoans a place to register their living will or their health care directives. He included a copy of his Office's website on living wills (Attachment #1-Chart), and explained how living wills and health care directives work. With a registry in place, living wills can be on file with the Secretary of State where they will be put on a secure database with a password which permits access. The password can be entrusted to close relatives and would also be printed on a wallet-sized card to carry in case of an emergency. Emergency personnel can then access living wills in emergency situations. He then walked the committee through the bill and discussed liability issues and the immunity provision.

Senator Kelly asked about the public records exemption and if the only time a hospital or physician could access the living will is if the person registered provides them with the password. **William Von Tagen** said yes. He recommended that at some point this aspect be revisited, once the registry is established. **Senator Kelly** asked if any government agencies would be able to access the account. **Tim Hurst, Chief Deputy, Office of the Secretary of State,** said a computer specialist would probably be the only government personnel to have access to the account without a password, to maintain privacy but to allow for a way to retrieve a password if a registered person lost theirs. **Senator Kelly** asked about the immunity provision, and **William Von Tagen** explained that there was a concern that law suits would arise if the registry was relied upon in an emergency situation, so granting immunity would prevent law suits and encourage compliance with the living wills.

Senator Werk asked about unconscious patients and whether emergency personnel would have the right to use the password to access the information if they found it in a wallet. **William Von Tagen** stated the emergency personnel would probably contact a personal physician or someone with durable power of attorney like they currently do for other reasons. **Senator Werk** suggested that the wallet card include a checkbox allowing use of the password in the event of unconsciousness. He then asked about the "facially valid" immunity provision, and **William Von Tagen** explained the term used as at "face value".

Senator Kelly asked whether there was a provision for deletion from the registry after death, and **William Von Tagen** said the registry would be purged every two years, at a minimum.

Senator Compton asked about the difference between **H 708** and **HCR 40**, and discussion followed.

Peggy Munson, Executive Council Member, American Association of Retired Persons (AARP) testified in support of the bill and explained its benefits. She said it will be a great tool for physicians and their staff.

MOTION: **Senator Broadsword** moved to send **HCR 708** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by a **voice vote**. **Senator Broadsword** will sponsor the bill on the floor.

UPDATE: **Senator Darrington** announced to the committee that the Senate Judiciary and Rules Committee sent **RS 16148**, **RS 16149**, and **RS 16150** to print. These are the RS's which reject rules already discussed by the committee. He asked if the committee wanted to ask with unanimous consent for the RS's to come back to them or if they would prefer that they go straight to the floor. The committee expressed their intent to send the RS's directly to the floor once they become bills. **Senator Compton** will sponsor the bills on the floor.

ADJOURN: There being no further business, the meeting adjourned at 4:01 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 2, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:03 p.m. and welcomed the guests in attendance.

MINUTES: **Senator Coiner** moved to approve the minutes of February 23. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**.

SCR 124 **Robert Vande Merwe, Executive Director, Idaho Health Care Association,** introduced **SCR 124, Stating Findings of the Legislature and Requesting the Department of Health and Welfare to Develop an Informal Dispute Resolution Process which is Partially Independent from the Department for Intermediate Care Facilities**. This bill was heard by the committee on February 23 and held subject to the call of the Chair until representatives from the Department of Health and Welfare could arrange to be present for a hearing.

Randy May, Deputy Administrator Division of Medicaid, Department of Health and Welfare, spoke in support of the resolution. His testimony is included as an attachment (Attachment #1). Although he does not think the dispute resolution process will require extra resources, his staff has expressed worries to the contrary, and a pilot program has been developed to work through the issues. Should the program be successful and necessitate additional resources, the Department can return to the legislature in a year with a budget request.

Senator Darrington asked if the main reason to have dispute resolution was to resolve issues in the survey process, and **Randy May** said yes. **Senator Darrington** asked if the dispute resolution process would result in binding arbitration, and **Randy May** stated that it would be binding upon the Department because the Department has agreed to being bound. If the facility is still unhappy with the result, they can apply administrative procedures to appeal it to the Director or take the issue to district court. **Senator Darrington** asked whether the resolution process would be in place during the next year to see how it works before it comes back to the legislature. **Randy May** said it would be, and **Senator Darrington**

summarized that establishing the process should not take long and a history on its effectiveness will be developed in time to make decisions next year.

Senator Werk asked why a resolution needs to be passed directing the Department to create the process if the Department has already agreed to do so. **Randy May** explained that it would provide a point of reference for legislators should the need for resources arise in the future.

Senator Broadsword asked if the resolution process would alleviate some of the strain expressed by facilities during rules hearings earlier in the session, and **Randy May** said it would.

Senator Brandt expressed support for the idea and explained that it helps to have a paper trail, like a resolution, for legislators and others to look to as they flow in and out of positions.

Robert Vande Merwe thanked Mr. May for his support and agreed that concerns over rules would be lessened with this resolution process.

MOTION: **Senator Darrington** moved to send **SCR 124** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by a **voice vote**. **Senator Darrington** will sponsor the bill on the floor.

DISCUSSION: **Senator Werk** announced that the Medicaid buy-in legislation had passed the House Health and Welfare Committee, but the Medicaid reform proposal did not.

There was discussion on how to proceed with a new version of the mercury resolution discussed in committee on February 28.

ADJOURN: There being no further business, the meeting adjourned at 3:18 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

GOOD AFTERNOON, MR CHAIRMAN, I AM RANDY MAY, A DEPUTY ADMINISTRATOR IN THE MEDICAID DIVISION. ONE OF MY RESPONSIBILITIES IS OVERSIGHT OF THE FACILITY STANDARDS BUREAU—INCLUDING THE SURVEY TEAM THAT INSPECTS INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED TO ENSURE COMPLIANCE WITH STATE AND FEDERAL GUIDELINES.

THE DEPARTMENT SUPPORTS SENATE CONCURRENT RESOLUTION 124 TO DEVELOP AN INFORMAL DISPUTE RESOLUTION PROCESS FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED.

WE BELIEVE THAT INFORMAL DISPUTE RESOLUTION PROCESSES ARE POSITIVE IN THAT THEY:

- PROVIDE A VALUABLE FEEDBACK LOOP TO IDENTIFY WHERE THE SPECIFIC CONTENTIOUS ISSUES ARE BETWEEN SURVEY STAFF AND THE FACILITY;
- IMPROVE THE QUALITY AND CLARITY OF THE SURVEY AND THE SERVICES DELIVERED;
- HELP IDENTIFY AREAS NEEDING MORE TRAINiNG, CLARIFICATiON, OR EMPHASIS IN THE INDUSTRY;
- PROVIDE A GOOD CHECK AND BALANCE TO ENSURE SURVEYORS DO NOT BECOME OVER-ZEALOUS IN THEIR ENFORCEMENT

WE CURRENTLY HAVE INFORMAL DISPUTE RESOLUTION PROCESSES IN PLACE FOR SKILLED NURSING FACILITIES (80 FACILITIES AND 6,150 BEDS) AND FOR RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES (270 FACILITIES AND 6,420 BEDS). WE BELIEVE BOTH CONTRIBUTE POSITIVELY TO THOSE RESPECTIVE PROGRAMS.

(Attachment #1)

IN THE INTERMEDIATE CARE FACILITY FOR THE MENTALLY RETARDED, WE HAVE 64 FACILITIES AND *564* BEDS. IT IS A MUCH SMALLER SEGMENT OF OUR WORKLOAD—BUT—THESE FACILITIES DEAL WITH SOME OF THE MOST COMPLEX CLIENTS IN THE STATE.

WE BELIEVE AN INFORMAL DISPUTE RESOLUTION PROCESS WILL PAY POSITIVE DIVIDENDS AND AM COMMITTED TO SUPPORT THIS. I BELIEVE WE CAN SUPPORT THIS EFFORT OUT OF EXISTING RESOURCES.

MY STAFF HAS CONCERNS OVER THE TIME, MANPOWER, AND POTENTIAL COSTS INVOLVED. THESE INFORMAL DISPUTE RESOLUTION PROGRAMS TEND TO BE VERY TIME-INTENSIVE. WE HAVE JOINTLY AGREED WITH THE IDAHO HEALTH CARE ASSOCIATION, TO MOVE FORWARD WITH A PILOT PROJECT USING PRESENT DEPARTMENT RESOURCES. DURING THAT PILOT PROJECT:

•WE WILL DOCUMENT THE TIME, MANPOWER, AND COSTS INVOLVED;
•WE WILL GET FEEDBACK FROM PROVIDERS, SURVEYORS, AND STAKEHOLDERS; AND
•EVALUATE THE EFFECTIVENESS OF THE IDR PROCESS.

WE WILL RETURN JOINTLY TO THE LEGISLATURE NEXT YEAR WITH A REPORT AND--IF NECESSARY—A REQUEST FOR ADDITIONAL RESOURCES.

WE JOINTLY BELIEVE THIS WILL HAVE A POSITIVE IMPACT ON THE SURVEY PROCESS AND ON THE QUALITY OF CARE IDAHO CITIZENS IN AN ICF/MR WILL RECEIVE.

WITH THAT MR. CHAIRMAN, I WILL STAND FOR QUESTIONS.

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 6, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:03 p.m. and welcomed the guests in attendance.

H 615 **Senator Joe Stegner** introduced **H 615, Relating to Mental Health Parity in State Group Insurance**. He stated that this bill creates a pilot program to establish mental health parity for state employees. The pilot program was recommended by the Mental Health Subcommittee of the Health Care Task Force. The lack of mental health parity in health insurance is thought to contribute to the inability of the general public to receive mental health services. For some time, there has been interest in expanding policies to cover mental health services in the same way that they cover physical ailments. This bill is an opportunity to use state employees as a sample group to test the results of covering mental health services. Through this pilot project, the legislature will be able to evaluate the successes, failures, and costs of including mental health services in insurance policies. The cost of broadening state employee insurance coverage would be almost $2 million, but this is just an estimate and the ultimate cost will be determined as the project progresses.

Senator Compton commented that mental health coverage has the potential to be a savings for the state, ultimately, and **Senator Stegner** agreed.

Senator Broadsword asked whether there was any indication that state employees were taking time off to deal with mental health issues which could be prevented by this coverage. **Senator Stegner** said he does not have statistics on it, but he explained that state employees are a good average to represent the state for lost work time, etc. as a result of mental health issues and personal crises.

Senator Kelly asked if the bill would affect any of the counseling services currently available to state employees. **Senator Stegner** stated that the current counseling programs are limited in their coverage, and they would be affected. They could be involved in treatment or gate-keeping

responsibilities, but how they will be affected will be determined more specifically throughout the pilot project. **Senator Kelly** asked what the time frame for implementation is and whether any contracts would have to be renegotiated. **Senator Stegner** stated his expectations that the project would be implemented at the first renewal date for insurance policies.

Senator Werk asked if insurance costs would rise for either the insurer or the employer in order to cover the costs associated with the project, and **Senator Stegner** said there are no assumptions to that effect, but once the project gets underway, these issues will be better defined. **Senator Werk** asked if the legislation intends the state to pick up the costs of the project, and **Senator Stegner** said it was his intention that the state fund the project. It is possible that the state could save money if it was deemed beneficial by an insurance carrier to have broader health coverage.

MOTION: **Senator Broadsword** moved to send **H 615** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Stegner** will sponsor the bill on the floor.

RS 16211 **Senator Coiner** introduced **RS 16211, Stating Legislative Findings and Requesting the Idaho Department of Environmental Quality to Prepare a Report Assessing the Nature and Extent of Mercury Contamination in the Environment of the State of Idaho and the Potential Environmental Impacts from the Addition of any New Sources of Mercury**. The committee discussed this topic on February 28, and this resolution resulted, in part, from the discussion. **Senator Coiner** explained how the report would identify sources of mercury and contaminated water bodies in Idaho. He also explained the federal mercury rule on thermal power plants which allows states to opt in or out of the cap-and-trade program for mercury emissions from power plants. Although the Environmental Protection Agency (EPA) has withdrawn the rule for reconsideration, a decision will probably have to be made on whether to opt out of the program by November 15 or Idaho will be automatically opted in.

Toni Hardesty, Director, Department of Environmental Quality (DEQ), stated that mercury in the environment is an emerging issue and much is still unknown about it. There are five or six studies which are currently underway, in Idaho to look into the issue.

Senator Compton asked if there was any aspect of the resolution which could be overreaching and cause problems in the future. **Director Hardesty** stated that the decision to opt in or out of the mercury cap and trade program is a very significant decision for the state because once a state opts in, it cannot opt out. If Idaho opted out, however, it could opt in at any point in the future. If a plant wanted to move into Idaho but Idaho had opted out of the program, DEQ could not accept the plant's application to build here unless the plant produced zero mercury emissions. **Senator Compton** asked if this was a concern, and **Director Hardesty** said there are two facilities which are currently interested in building in Idaho. The state would have to opt into the program in order to

accept their applications.

Senator Compton stated that this resolution is simply a guideline stating the legislature's intent, but the final decision was in the hands of DEQ and its director. **Director Hardesty** agreed and explained that the governor would like the state to opt into the program at some point, whether to opt into the federal program as it exists or to develop a state-specific plan.

Senator Darrington asked for an explanation of the cap-and-trade program. **Director Hardesty** explained that it is a federal program that EPA has structured with the intent to reduce mercury emissions nationwide. Each state was inventoried for how many mercury emitting sources reside in the state, and a point-value budget was then assigned to each state. Idaho received a zero because it contained no such sources. States are allowed to opt into the program, opt out of it, or opt in with a state-specific plan. Because Idaho's budget is zero, it is a bigger issue here than for other states. By not opting into the program, Idaho cannot allow a facility to be built unless the power plant produces no mercury emissions. If Idaho opted into the Cap and Trade Program a facility wishing to build here would have to go to another state and buy enough mercury emission credits to cover their operation here.

Senator Broadsword asked if a rule had to be promulgated in order to opt out of the program, and if the rule would have to come back to the legislature for approval as with other DEQ rules, and **Director Hardesty** said "yes". If Idaho does not respond the state will be automatically opted into the program. Taking any other action requires a notice to EPA by DEQ and the subsequent promulgation of a rule by the DEQ board.

Senator Werk asked what the mission of DEQ is, and **Director Hardesty** said their mission is to protect public health and the environment.

Senator McGee asked how much of the information required in the resolution could be gleaned from existing studies. **Senator Coiner** answered that the report will be compiled from existing or on going studies, and the resolution requests that the information from these studies be compiled and assessed over the next year.

Senator Compton asked if the resolution included anything which DEQ would testify against at this point, and **Director Hardesty** stated that the governor's preference is to opt in at some point in time. **Senator Compton** stated that there is nothing in the resolution which precludes the governor from making that decision in the future.

Senator Darrington stated that this meeting would suffice as the hearing on the resolution if the committee unanimously requested that it be sent to the Judiciary and Rules Committee to print. From there, the resolution would go straight to the floor, unless the Chairman wanted it to return for a hearing. **Senator Compton** stated that this meeting would suffice as the hearing since the biggest actors in the decision were present.

Senator Kelly asked whether DEQ had used a temporary rule or a proposed rule when it started to opt into the program over the summer, and whether it could use a temporary rule to opt in later despite a

resolution requesting otherwise. **Director Hardesty** said DEQ had used and would use a proposed rule, not a temporary rule, either to opt in or out. She clarified that at this time, the federal rule is being reconsidered and DEQ has no intent to opt in or out until the final decisions have been made on the federal level.

Senator Broadsword stated that since a decision to opt out of the program must be made by November 15, and since the decision must be in the form of a rule, it would have to be a temporary rule since the legislature will not be in session. **Director Hardesty** clarified that a rule is needed to opt in, but only a notification is needed to opt out. **Senator Broadsword** asked if it would be more difficult to opt into the program later if Idaho opted out at the start. **Director Hardesty** said as far as DEQ is aware of, it would not make a difference at what point the state opts in.

Senator Kelly asked if a notification to opt out of the program would have to be followed by a rule, and **Director Hardesty** said yes.

Senator Coiner recapped briefly. There was more discussion on the ramifications of opting in or out of the program.

Senator Werk asked how many states have opted in. **Martin Bauer, Administrator, Air Quality Division, DEQ**, stated that although DEQ does not have an exact number, the majority of states have opted in because they were not given a credit budget of zero. **Senator Werk** asked whether DEQ would have to go through its board before giving the notification to opt in or out. **Director Hardesty** said no. Only the rule would have to go to its board. **Senator Werk** asked whether the governor could make the decision on his own at any time since the DEQ is part of the executive branch. **Director Hardesty** said yes.

There was discussion about the involvement and support of minority and majority leadership in both houses on the resolution. Discussion on S 1293, the initial piece of legislation on mercury, followed and **Senator Compton** stated that he does not intend to act on it. **Senator Kelly** said that while this resolution sends a request to DEQ on whether to opt in or out, and some legislators would prefer a more binding piece of legislation to aid in the decision. **Senator Darrington** commented that agencies pay attention to resolutions.

MOTION: **Senator Keough** moved to send **RS 16211** to the Senate Judiciary and Rules Committee for printing, and then directly to the floor. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Compton** thanked those who participated in the thoughtful discussion.

S 1423 **Senator Broadsword** introduced **S 1423**, **Relating to Genetic Testing Privacy**. This bill is designed to give Idaho's citizens the option of having a genetic test performed to determine if they are predisposed to a specific genetic disease, and it would prevent employers from using the resulting information to limit employers or insurers from using the information to raise rates. A family history of heart disease, breast cancer, etc. would be a good reason to have a test done. Getting the results could encourage a person to change their lifestyle, exercise more, eat vitamin-rich foods, and

plan for future family issues. She gave an example from Montana where an employer used this information to determine promotions and lay offs. Several physicians in Idaho have indicated that some patients refuse to have genetic testing done for fear that the information would change their insurance rates. She mentioned that even if a person tested positive for a gene which causes an illness, they still only have a 20% chance of contracting the illness.

Brad Hoaglun, representing the **American Cancer Society**, spoke in support of the bill. **S 1423** protects the privacy of genetic testing and prevents discrimination based on the results of those tests. Current gene testing can be done for breast, ovarian, and colorectal cancer. The understanding of genetic makeup has exploded over the last few years as has the ability to test for diseases. In most instances of genetic testing, an altered gene does not mean an individual will get sick or get sick soon, but rather that the individual is predisposed to the disease. Genetic testing is about probabilities, not predictions. Prohibiting discrimination based on test results is not a new idea. The first state to ban it in the workplace was Wisconsin in 1991. According to the National Council of State Legislatures, 33 states currently prohibit employment discrimination based on the results of genetic tests. Most of those states also restrict access to genetic test results. Eighteen states have specific penalties for genetic privacy violations, and thirteen states have specific penalties for genetic discrimination in employment. Although Idaho does not have a problem with this type of discrimination currently, if even one corporation moved in and began to screen employees genetically, it would create a domino effect of other corporations trying to do the same to save money.

Teresa Molitor, Vice President, Human Resources, Idaho Association of Commerce and Industry (IACI), testified in opposition to the bill. There have not been any instances in the state in which an employer has used the results of a genetic test to fire or demote employees and there may not be a need for the bill. The portion of S 1361 which was significantly changed in **S 1423** is section 39-8304, regarding private rights of action. IACI is concerned with this section because it could be an economic burden if employers have to respond to every complaint which arises from the legislation. Creating a private right of action in this section of code is unnecessary because employers are prohibited from discriminating in other parts of code, particularly the Idaho version of the Americans with Disabilities Act (ADA). Of lesser concern is the enforcement section which allows the Attorney General to conduct his own investigation if he has reason to believe an employer is discriminating. This draft, although improved, is still opposed by the employer community.

Senator Keough asked whether Ms. Molitor had any specific language suggestions, and **Teresa Molitor** recommended a deletion of 39-8604 because the creation of a new cause of action is IACI's main concern.

Senator Kelly asked whether the language in **S 1423** was based upon any other state's language, and **Senator Broadsword** said the language came from a Utah bill which passed several years ago.

Senator McGee asked whether there was still room to negotiate and

come to an agreement on the language. **Senator Broadsword** explained the process of negotiations which went into the creation of this bill and the previous draft and stated that no response was given to her most recent request for IACI's input on language.

James Dale, employment lawyer, Stoel Rives Law Firm, testified in opposition to the bill. He expressed concerns about the private right of action that either an individual or the Attorney General could use against an employer. He questioned the intent of the bill because protection exists already under the ADA, which prohibits discrimination against an individual who is regarded as being disabled. A survey of Fortune 500 companies revealed that only 12 of 500 companies do genetic testing, and those 12 companies do the testing as part of an employee wellness program. Title 7 of the Human Rights Act would also prohibit employer discrimination of this type. To create a new private right of action against all employers on an issue with so little evidence of abuse is a concern. Furthermore, it is concerning that there is no cap on damages which could be awarded under the legislation.

Senator McGee asked why 33 states could pass this type of legislation if it is not necessary. **James Dale** said he has spoken to lawyers in Utah and New York, states that have passed similar legislation, and neither have ever had a case come up on this topic.

Senator Compton asked if the ADA would cover discrimination for a disease which is not necessarily a disability, and **James Dale** stated that the ADA also includes language which says an employer cannot regard someone as being disabled.

Senator Keough asked if cancer is a disability, and **James Dale** said it can be. A disability is substantial limitation of a major life activity.

Senator Darrington asked whether it would be discrimination if an employer with two candidates to choose from chose the candidate who happened to not mention a history of cancer in his family. He asked if anecdotal evidence was enough for a cause of action or if there had to be test evidence. **James Dale** said the candidate who was not chosen could state a claim, although it may be difficult to substantiate.

Senator Werk asked if individuals are allowed to state a claim on anything they want at any time they want and bring it to an attorney to carry. **James Dale** said yes, subject to Rule 11 sanctions.

Lyn Darrington, representing **Regence BlueShield of Idaho**, stated that Regence is neutral on the bill. The language in 41-1313, subsection 3 is identical to language which already exists in Idaho Insurance Code, as it relates to prohibiting insurers from using genetic testing information to determine preexisting conditions. She said that Regence and most other insurers in the state do not pay for genetic tests. As a result, insurers would not have access to the test results unless the physician sends the information to the insurer. Patients' fear of being tested may have less to do with insurers finding out and more to do with having to cover the costs of the test on their own.

Joe Gallegos, Associate State Director, American Association of Retired Persons (AARP) Idaho, testified in support of the bill. His testimony and the written testimony of **Peggy Munson** (also of AARP) are included as attachments (Attachments #1 and #2). He commented that complaints in which an employee prevails against an employer are very small in number. Few right to sue notices which are filed end up being carried out because attorneys are seldom willing to take on a complaint with little merit. Legislation without an enforcement tool is not legislation at all, and having the right to sue is an enforcement tool. If an employer has sound personnel policies and procedures in place, the likelihood that they would face a complaint is minimized.

Dr. Bob Seehusen, Chief Executive Officer (CEO), Idaho Medical Association (IMA), testified in support of the bill. Patient confidentiality is part of the ethics and principles which physicians follow. This legislation is needed in order to keep pace with science and technology developments in diagnosis and treatment. Information about predispositions for diseases is very personal information.

Senator Darrington asked whether the Health Information Portability and Accountability Act (HIPAA) takes care of privacy issues. **Dr. Bob Seehusen** said HIPAA covers information which goes between providers and insurance companies, but not necessarily employers.

John Mackey, representing **United Heritage Financial Group** and the **American Council of Life Insurers**, testified in opposition to the bill. Section 41-1313, paragraph 3, will prevent an insurance company from obtaining all of the information it should have in order to fairly evaluate the risk or probability of loss and to determine the appropriate premium. Improper premium design results in overcharging all others in the insurance program through a rate increase, etc. Surveys indicate that the main reason why people fail to buy long-term care insurance is because the premium is too high. Without insurance, individuals must rely on the state for help in medical situations.

Senator Compton asked whether Mr. Mackey was in favor of insurance companies genetic testing everyone in order to run a risk assessment, and **John Mackey** said if an individual has a test, the insurance company should have access to the results. **Senator Compton** stated that insurance is based on a look-back situation and is not a future prediction based on testing.

Senator Broadsword concluded by stating that the Attorney General's Office looked at the legislation and issued a statement saying that they saw no conflict between the bill and current code. The Department of Insurance chose the language in the insurance portion of the bill. Dr. Francis Collins, Director of the National Human Genome Project, has been frequently quoted saying, "Every human being is estimated to have between five and 50 significant gene mutations, making us all ultimately unemployable and uninsurable. By allowing genetic discrimination to persist, we effectively penalize the people who happen to have the genes that were discovered first." She stated that **S 1423** is a commonsense piece of legislation and it is time for Idaho to join with the 33 other states which have followed this path.

MOTION: **Senator Werk** moved to send **S 1423** to the floor with a **do pass** recommendation. **Senator Keough** seconded the motion.

Senator Kelly commented on the seriousness of the legislation and expressed concerns about its potential for unintended consequences. A bill of this magnitude should be a consensus piece of legislation, and she expressed concerns about the number and nature of people opposing it.

SUBSTITUTE MOTION: **Senator Kelly** moved to hold **S 1423** in committee. **Senator Darrington** seconded the motion.

Senator Keough affirmed her support for sending the legislation to the floor. She said the sponsor took remarkable steps to work with all parties involved. She asked that it be sent to the floor to continue the process in order to motivate concerned parties to take action and make it a consensus piece of legislation.

AMENDED SUBSTITUTE MOTION: **Senator McGee** moved to send **S 1423** to the 14th order. **Senator Brandt** seconded the motion.

Senator Broadsword asked about the purpose behind sending the bill to the 14th order, and **Senator McGee** stated his belief that all means of negotiation have yet to be exhausted. The legislation could be amended once consensus is reached. Because the sponsor has worked hard, her efforts should not be wasted by holding the bill in committee, but there is room to reach consensus. He pledged to work with Senator Broadsword to bring the parties together.

Roll Call Vote On Amended Substitute Motion, Substitute Motion and Original Motion: The **amended substitute motion** to send **S 1423** to the 14th order **failed**, 3 ayes to 6 nays.

AYE: Chairman Compton, Senators Brandt, McGee

NAY: Vice Chairman Broadsword, Senators Darrington, Keough, Coiner, Werk, Kelly

The **substitute motion** to hold **S 1423** in committee **failed**, 3 ayes to 6 nays.

AYE: Senators Darrington, Brandt, Kelly

NAY: Chairman Compton, Vice Chairman Broadsword, Senators Keough, McGee, Coiner, Werk

The **motion** to send **S 1423** to the floor **passed,** 6 ayes to 3 nays.

AYE: Chairman Compton, Vice Chairman Broadsword, Senators Keough, McGee, Coiner, Werk

NAY: Senators Darrington, Brandt, Kelly

The roll-call votes are included as an attachment (Attachment #3-Chart).

MINUTES: **Senator Coiner** moved to approve the minutes from February 27.

Senator Broadsword seconded the motion. The motion carried by a **voice vote**.

ADJOURN: There being no further business, the meeting adjourned at 4:50 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

AARP Idaho

March 6, 2006

Re: S 1423 Genetic Testing Privacy

Senate Heath & Welfare Committee Members

My name is Joe Gallegos; I am an associate state director for AARP Idaho. AARP is a nonpartisan, non profit membership organization with 166,000 members in Idaho.

On behalf of AARP Idaho I stand to request your yes vote on Senate Bill 1423.

Our request for your support is based on the following:

*it is consistent with long standing Idaho and national public policy to prohibit the inappropriate use of medical information for discriminatory reasons.

*it properly provides for the confidentiality of medical information and is consistent with other recognized restrictions regarding an individual*s health status.

(Attachment #1)

AARP Idaho

March 6, 2006

Re: H 615 Mental Health Panty

Senate Heath & Welfare Committee Members

My name is Peggy Munson; I am a member of AARP**'**s Capitol City Task Force and a member of its Executive Council. AARP is a nonpartisan, nonprofit membership organization with 166,000 members in Idaho.

On behalf of AARP Idaho I stand to request your yes vote on House Bill *615.*

Our request for your support is based on the following:

*health care coverage is an invaluable employer benefit and in addition to its obvious benefits to an employee, help to establish the efficiency and reliability of an employer**'**s workforce.

*the equal treatment of mental health to physical health coverage will enhance to the full and permanent recovery of individuals who suffer a mental illness attributed to or as a result of a physical illness.

(Attachment #2)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 7, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Brandt, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senators Darrington, Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:07 p.m., a quorum being present.

MINUTES: **Senator Broadsword** moved to approve the minutes from February 28, March 1, and March 2. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

H 567 **Sarah Scott, Program Operations Manager, Idaho Commission on Aging**, presented **H 567, Relating to the Commission on Aging.** A copy of her talking points is included as an attachment (Attachment #1). Idaho Code section 67-5009 of the Senior Services Act requires the Commission to carry out the ombudsman program. The number of ombudsmen has not increased even though the rise in demand for the Commission's services has. The ombudsman program was left out of the list of programs eligible for funding, and after research, there was no evidence that the omission was anything but an oversight. This bill will fix the omission and help to fund more ombudsmen to meet the rising demand.

Senator Broadsword asked if the people who run the program were willing to shift some of their funding for this purpose, and **Sarah Scott** stated that, in fact, they were the people who requested the change.

Senator Compton asked if the ombudsman is a paid position, and **Sarah Scott** said yes.

Senator Kelly asked about the bill's fiscal impact and asked if the changes could be made without cutting any other programs in order to fund them, and **Sarah Scott** replied that they could, for the time being.

Senator Compton asked for an update on the recent restoration of funding to the Commission, and **Sarah Scott** recounted that the Commission requested $865,000 but the governor requested $300,000 on their behalf. This caused much concern among seniors. JFAC voted to

fund an addition $278,000, totaling about $578,600. The top priorities given with the appropriation were adult protection, home delivered meals, case management, etc., but not ombudsmen.

Senator Werk expressed concern that shifting funding to cover additional ombudsmen might force the Commission to return to JFAC in the future requesting more funding for the same programs which were voted to be funded this year.

Peggy Munson, member of **AARP's Capitol City Task Force** and **Executive Council**, testified in support of the bill. Ombudsmen are advocates for elderly residents both in long-term care and assisted living facilities. They are important in resolving complaints from residents and timeliness is critical to their effectiveness. AARP supports giving local councils on aging the flexibility to fund their ombudsmen and other senior service programs (Attachment #2).

There was discussion about how facilities resolve complaints to filter the complaints which reach ombudsmen.

MOTION: **Senator Brandt** moved to send **H 567** to the consent calendar, being no opposition to the bill. **Senator McGee** seconded the motion. There was discussion on the purpose of sending bills to the consent calendar. The motion carried by a **voice vote**. **Senator Brandt** will sponsor the bill.

H 614 **Representative John Rusche** presented **H 614, Relating to the Board of Pharmacy**. He stated that this bill takes an existing database and publishes it on the internet to be available 24 hours per day. The database was built with a grant from the Food and Drug Administration in order to monitor controlled substances, particularly those which are prone to diversion or abuse. Pharmacists enter information into the database at the time a prescription is filled to track the history of prescriptions and watch for abuse. The database is used by practitioners, pharmacists, and law enforcement. Currently, information in the database can only be obtained by contacting the Board of Pharmacy during normal working hours, but patients seek services at all times of the day. This bill would establish a secure database accessible only to licensed practitioners, licensed pharmacists, and law enforcement, as the current database is, but the information would be available over the Web at any time. The bill lays out protections so that the information is not discoverable and requires current Health Information Portability and Accountability Act (HIPAA) protections on the information.

Senator Broadsword commended Representative Rusche for his work and commented that time has come for legislation which prevents prescription drug abuse as this bill does. **Senator Werk** echoed her comments.

Senator Compton added that this database could also help to avoid prescribing drugs which conflict when taken simultaneously.

Senator Kelly asked about privacy and the security of the website. **Representative Rusche** explained the process that a physician or pharmacist would have to go through to get into the database online, and

reiterated that only the same personnel which can access the information currently would be able to access it once it is online. It is protected by HIPAA, and every individual who enters the database will be tracked.

Dr. Chris Tobe, a **practicing emergency physician** at **St. Alphonsus Regional Medical Center** and **Elmore Medical Center** in Mountain Home, testified in support of the bill. He also represents the Idaho chapter of the **American College of Emergency Physicians**. This bill will allow physicians to identify individuals who have a potential for abuse and to access this information 24 hours a day, seven days a week. Abuse shows up most often with issues of chronic pain, and chronic pain patients have to be taken at face-value unless there is a database to refer to. Regarding privacy, he explained that all medical records are on file in some form and can be accessed according to HIPAA limitations.

MOTION: **Senator Broadsword** moved **H 614** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by a **voice vote**. **Senator Broadsword** will sponsor the bill on the floor.

H 619 **Jeremy Pisca**, representing the **Idaho Physical Therapy Association**, introduced **H 619**, **Relating to the Physical Therapy Practice Act**. He stated that currently, the Physical Therapy Licensure Board is governed by the Idaho State Board of Medicine. The Licensure Board must ask the Board of Medicine for permission before it makes decisions on any issue which comes before it. This bill is designed to give physical therapists their own board by removing the Physical Therapy Licensure Board from the Board of Medicine and placing it under the Bureau of Occupational Licenses, similar to chiropractors, optometrists, and others. Licensure for physical therapists would change from a two-year license to a one-year license, and continuing education credits would change from 32 every two years to 16 every year, to conform with the Bureau of Occupational Licenses. The Board of Medicine and the Idaho Medical Association do not oppose the bill.

Senator Broadsword asked if the Physical Therapy Licensure Board foresees any difficulties getting personnel appointed in a timely manner by the Gentleman on the Second Floor, and **Jeremy Pisca**, said he anticipates no problem because the Board is already in place but acting under the umbrella of the Board of Medicine.

Senator Broadsword asked **Rayola Jacobsen, Bureau Chief, Bureau of Occupational Licenses**, whether adding another board would require additional staffing in the Bureau, and **Rayola Jacobsen** said they are requesting an extra staff member currently due to increased demands on the staff created by the registry of contractors. This additional board could be dealt with seamlessly through the addition this new employee.

Senator Compton asked how many licensed physical therapists there are in Idaho, and **Jeremy Pisca** said there are 923 and 239 physical therapy assistants.

Senator Werk asked why the legislation was necessary and **Jeremy Pisca** explained the ongoing history of the physical therapy profession

gaining independence from physicians since 1979. This legislation is for the sake of independence, and it removes a layer of bureaucracy.

MOTION: **Senator Brandt** moved to send **H 619** to the consent calendar. **Senator McGee** seconded the motion.

Senator Werk commented that the consent calendar should be used for very simple changes to code, usually brought by agencies. He said that even though this bill has seen no opposition, it is not just a simple change to code. Care should be taken in how the consent calendar is used because inappropriate use could lead to issues bigger than the consent calendar. He requested that the bill not be sent to the consent calendar.

Senator Brandt explained that any piece of legislation on the consent calendar can be removed from the calendar by a senator standing and stating desires to that effect.

The motion carried by a **voice vote**, **Senator Werk** voting no. **Senator Brandt** will sponsor the bill.

DISCUSSION: There was discussion about the next day's agenda.

ADJOURN: There being no further business, the meeting adjourned at 3:53 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

HO 567
Talking Points

- The state Ombudsman program is mandated by both the Federal Older Americans Act and the Idaho Senior Services Act.

- Idaho Code Section *67-5009* of the Senior Services Act requires the Commission to carry out the Ombudsman program.

- The number of Ombudsman covering the entire state of Idaho has remained at 8 since *1985.*

- The number of long-term care beds in the state of Idaho has grown substantially since *1985:*
  1985: 6,000 beds 2005: 12,830 beds

- The number of complaints received by the Ombudsmen since 1985 has also grown substantially:
  1985: 894 2005: 1,734

- The number of general facility visits required of the Ombudsman has grown also:
  1985: 1,402 2005: 2,851

- The Idaho Commission on Aging receives both federal and state funding to carry out its programs.

- The federal Older Americans Act specifically provides for funding the Ombudsman program, but that funding has remained flat.

- Idaho Code Section 67-5008 of the Senior Services Act provides authority for state funding to be used for Senior Services Act programs; provided, however that the Ombudsman program was omitted from the list of programs eligible for state funding.

- The Commission**'**s Deputy Attorney General researched legislative history to determine if the omission was intentional or just an oversight. There was no evidence that the omission was anything other than an oversight.

- To keep up with growing need in the Ombudsman program, Senior Services Act funding authorization should include the Ombudsman program.

(Attachment #1)

AARP **Idaho**

March 7, 2006

Re: House Bill No. *567*

Senate Health & Welfare Committee Members:

My name is Peggy Munson, I am a member of AARP Idaho**'**s Capitol City Task Force and I am also an Executive Council member. AARP Idaho is a nonprofit, nonpartisan membership organization with 166,000 members in Idaho.

On behalf of AARP Idaho I stand in support of House Bill *567* and request your yes vote on the important legislative proposal.

Our request is based on the following:

*Ombudsman are advocates for elderly residents in LTC and Assisted Living facilities.

* Ombudsman are very important in solving complaints from residents of Assisted Living Facilities.

* AARP is in support of giving local councils on Aging the flexibility to fund Their ombudsman and other senior service programs.

(Attachment #2)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 8, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:01 p.m. and welcomed the guests in attendance.

H 565 **Rayola Jacobsen, Bureau Chief, Bureau of Occupational Licenses**, introduced **Robert Hales, private practice lawyer**, representing the **Bureau of Occupational Licenses,** to present **H 565**, **Relating to the Idaho Residential Care Administrators Act**. This bill was brought by the Board of Residential Care Administrators, and it is supported by the Bureau. With its amendment, the bill gained the support of the Idaho Health Care Association. The bill eliminates unnecessary language and deletes language which allows a nursing home administrator to automatically get a residential care administrator license. The Residential Care Board did not feel it was appropriate to give nursing home administrators an automatic license. The Board will undergo negotiated rulemaking this spring to determine what types of education, training, and experience will be necessary for a nursing home administrator to have in order to get a residential care license.

Senator Darrington asked why the Residential Care Board did not feel it was appropriate to give nursing home administrators an automatic license, and **Robert Hales** explained that there is a belief that the philosophy and regulations governing the two professions are different.

Senator Compton asked if there was anyone present opposed to the bill. No one present was in opposition.

MOTION: **Senator Darrington** moved to send **H 565** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Broadsword** will sponsor the bill.

H 646 **Representative Marge Chadderdon** introduced **H 646**, **Relating to Vital Statistics**. This bill amends and clarifies who possesses the authority to remove a body once it has been buried. It will clear the discrepancy in Idaho law regarding the authority of who can bury the deceased and later

apply for disinterment of the buried body. **H 646** amends the vital statistics section (Idaho Code 39-269) and directs 54-1142, Idaho Code, the mortician's license rule. She gave a variety of reasons why people may request the removal of a buried loved one. The bill was brought forth by the Idaho Funeral Directors, the Idaho State Board of Morticians, and the Bureau of Occupational Licenses.

Senator Darrington asked how **H 646** affects non-public, non-commercial burial grounds, and **Representative Chadderdon** said the purpose of the bill is mostly to protect morticians.

Senator McGee asked how often this practice happens, and **Representative Chadderdon** said there have been two cases in her county in the last two years, and she gave an example from her own family. **Senator McGee** expressed compassion for her situation.

MOTION: **Senator Coiner** moved to send **H 646** to the consent calendar. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Coiner** will sponsor the bill.

H 664 **Kelly Buckland, Executive Director, Idaho State Independent Living Council,** introduced **H 664, Relating to Medicaid.** Similar legislation came forward in the 2005 legislation but failed to pass the House. This bill is an improvement on the 2005 bill. A section which allows a premium to be charged to people whose incomes are between 133 and 250% of poverty has been added. Previously, premium payments began at 250% and were calculated at 7.5% of the individual's income, which is the maximum allowed at the federal level. This change was made in order to stay consistent with the governor's Medicaid Reform plan. An example of a letter currently sent by the Department of Health and Welfare was given to committee members to dispel the myth that Medicaid clients do not pay co-pays (See Attachment #1).

Senator Broadsword asked if the co-pay would be on a sliding scale, meaning that it would go up as income rises, and **Kelly Buckland** explained that between 133% and 250% of poverty, co-pays would be set at a fixed amount. Higher than 250% of poverty, the co-pay would be 7.5% of the individual's income.

Senator Compton commented that no one had signed up to speak against the bill.

MOTION: **Senator Werk** moved to send **H 664** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senators Compton** and **Keough** will sponsor the bill on the floor.

H 613 **Senator Darrington** noted that **H 613, Relating to the Board of Pharmacy,** was an annual bill updating the list of Scheduled Drugs. **Senator Kelly** stated that there was no opposition to it in the House. The committee discussed the bill and decided it was straightforward.

MOTION: **Senator Werk** moved to send **H 613** to the consent calendar, as amended. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**. **Senator Werk** will sponsor the bill.

H 611 **Mick Markuson, Director, Board of Pharmacy,** presented **H 611, Relating to Pharmacists.** This bill addresses the relationship between individuals who prescribe medications and patients who receive them. There are concerns about telemedicine and prescriptions which are made online based solely on filling out an online questionnaire. This bill works to block these types of prescriptions. Through a tracking program, six pharmacies were found to fill prescriptions to Idaho patients online, and he gave the profiles on each of these pharmacies. All six are based out of other states where licensed physicians authorize pharmacies to send prescriptions without patients having ever visited the prescribing physicians. If the pharmacy is caught sending these types of prescriptions, their license can be revoked through this bill. If they continue the practice, the issue will go to the Attorney General's Office.

There was discussion on the difference between legitimate pharmacies and the ones prevented in **H 611**.

Senator Compton asked if there was a pattern to the drugs which these pharmacies prescribed, and **Mick Markuson** said the prescriptions were all controlled substances, and he guessed that most were narcotics. **H 611** will also tell pharmacies in the state to not participate in operations like these. Prescriptions must be filled with legitimate medical need.

MOTION: **Senator Coiner** moved to send **H 611** to the floor with a **do pass** recommendation. **Senator Werk** seconded the motion. The motion carried by a **voice vote**. **Senator Coiner** will sponsor the bill.

ADJOURN: There being no further business, the meeting adjourned at 3:42 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

IDAHO DEPARTMENT OF

HEALTH & WELFARE

DIRK KEMPTHORNE—GOVERNOR
KARL KURZ--DIRECTOR

ROBERTA BALL 12/27/05
2491 S HILTON
BOISE, ID 83705

ROBERTA BALL Medicaid 1.D. # 85603

We used the information below to determine your **maximum share of the cost of your care (co-payment amount)** under the Waiver Program.

1.	Your Countable Income	$2,238.34
2.	Less Your Personal Needs Allowance	$904.00
3.	Less Your Spouse/Family Need Allowance	$0.00
4.	Less your Insurance Premium	$0.00
5.	Less Miller Trust fee, if any	$0.00
6.	Less Mandatory Taxes, if any	$0.00
7.	Less Any Other Misc deductions	$16.82
Your Maximum share of the cost for care:		**$1,317.52**

The above amount is due for 02/01/06 and subsequent months. This amount will be deducted from your Personal Care Provider s Waiver payment. To verify the amount that was deducted from the provider, you should have your Personal Care Provider show you a copy of their remittance advice (RA) and pay your provider only the amount deducted from their check.

If you do not agree with this decision, you may request a fair hearing. Contact this office for information. You have thirty (30) days from the date this notice is mailed to request a fair hearing.

If you have any questions, please contact me at 334-6776

Joyce Ackerman
Self Reliance Specialist

cc: RMS/Client file

(Attachment #1)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 9, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senators Keough, McGee

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:09 p.m. and welcomed the guests in attendance.

PRESENTATION: **Julie Magelky, Program/Grant Director, Center on Disabilities and Human Development**, gave a presentation on the **Family Support 360 Program**. Her presentation (See Attachment #1 - Testimony) is included along with several attachments (Executive Summary, (See Attachment #2). The Idaho Family Support 360 Project is a federally-funded grant designed to provide support for families with a disabled family member. The grant is operated through the Center on Disabilities and Human Development at the University of Idaho. She introduced others in attendance who were also affiliated with the program: **Jill Smith**, **Family Resource Specialist**; **Tracey Warren**, partner with the project from the **Developmental Disabilities Council**; **Jim Baugh**, **Executive Director, Comprehensive Advocacy, Inc. (Co-Ad)**; **Cameron Gilliland**, representing the **Department of Health and Welfare.**

Julie Magelky requested the committee watch the progress of the program, review the results, and consider the recommendations of its work. The program is in its second year of a five-year project and positive results are beginning to manifest themselves. She described the structure of the program which is centered around families. She gave examples of the types of networking her program relies on and creates in order to meet the needs of the families in the program, like providing funding assistance and sharing information on lifestyle adaptations. Because there is little paperwork and because it can provide flexible, individual help for families, the program is simple and accessible.

A list of individuals and organizations involved in the council is included as an attachment (See Attachment #3). An example of the quarterly newsletter is included as an attachment as well (See Attachment #4-Brochure). Also, a summary of the progress made throughout the programs first year, 2005, is included (See Attachment #5 Chart). Other attachments include brochures on the program (See Attachments #6 and

#7 - Brochures) and letters from families who have been served through the program (See Attachments #8, #9, and #10 - Letters).

The program currently serves families in Health and Welfare Region 2, which includes Latah, Nez Perce, Lewis, Idaho, and Clearwater counties. The Resource Center is located in the Developmental Disability Program Office of Health and Welfare in Lewiston. There are plans to establish the program in a second region of the state, though decisions on where will probably not be made until autumn. Utilizing community resources is important to sustaining the program because currently, the program has achieved a 1:3 ratio of funding from the grant and funding from the community: every dollar of grant money used is matched by three dollars of community resources.

Senator Compton asked how the program is funded, and **Julie Magelky** explained that it relies on the five-year federal grant from the Administration on Developmental Disabilities (ADD). ADD's intent was to create a central organization to which families with a disabled member could look for help and information. **Senator Compton** asked about the size of the grant, and **Julie Magelky** stated that the grant for the full five years is $1.25 million. **Senator Compton** asked if the grant is renewable, and **Julie Magelky** explained how the organization is working to create a sustainable structure, utilizing resources in the community at a 1:3 ratio, because it is unknown whether the monies will be renewed.

Senator Compton asked whether a duplication of efforts occurs between the Department of Health and Welfare and this program. **Cameron Gilliland** answered that the grant is much larger than funding which the Department could dedicate to these services and so there is very little overlap.

Senator Brandt asked how the program is advertised, and **Julie Magelky** stated there is a website and a newsletter which people can access. By speaking to groups like this committee, information on its services can be passed by word of mouth. Also, by being active in the community and networking, people are learning about the program. **Senator Brandt** emphasized the importance of advertising these helpful services and recommended working with churches in the community.

Senator Compton mentioned there is a bill currently under consideration which would improve respite care, and **Julie Magelky** stated respite care is one of the biggest requests the organization receives.

Senator Werk asked about the differing needs and resources in urban versus rural areas, and discussion followed. **Julie Magelky** emphasized this program works well to reach families in rural areas because it can address individual needs flexibly, and the program also draws well from resources in urban areas.

Jill Smith expressed her support for the program and shared a few scenarios in which the program has significantly improved the lives of families in their region. She described what a weighted blanket is and how it helps individuals with a sensory issue to sleep.

Tracey Warren gave her support for the program as well. She stated the beauty of this model is that instead of being funded with state monies, the program truly accesses the community's resources well, as manifested in the 1:3 ratio mentioned earlier.

Jim Baugh also spoke in support of the program because it is an ideal example of leveraging community resources. Because the organization and personnel are not overburdened by caseloads and bureaucracy, it functions thoroughly and produces results in the way other programs have failed to. He gave an example of how the program would work for his family and his son.

Julie Magelky reiterated her desire to report to the legislature annually on the progress of the program.

Senator Compton thanked Ms. Magelky for her presentation and for her service in the program. He commended the program for the many ways it helps families.

ADJOURN: There being no further business, the meeting adjourned at 3:42 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

IDAHO
FAMILY SUPPORT
360 PROJECT

Family Support 360 Project
Idaho Senate Health and Welfare Committee
March 8, 2006

Idaho Family Support 360 Project is a five year federal grant designed to enhance support structures for families who have a member with a developmental disability. The grant is operated through the Center on Disabilities and Human Development at the University of Idaho.

I am Julie Magelky, the director of the grant and I would also like to introduce two very important people who will be available for questions after the presentation, Jill Smith, our Family Resource Specialist, and Sarah Holt, a mom who has worked with our Family Resource Center during the past year. My goal here today is to describe for you a grassroots model of support for families who have a member with a developmental disability that combines individual, community and Idaho Department of Health and Welfare programs.

What does this have to do with the Senate Health and Welfare Committee? What are we asking you to do? I am here to simply ask you to watch our progress, review our results, and consider the recommendations that result from our work. We are in our second year of a five year project, and are beginning to see the positive results of our efforts. We are requesting the opportunity to provide you with the results of a creative collaborative effort with a Health and Welfare program.

Let me describe the structure of the project in more detail.

Families are central to the fabric of life in Idaho. In our state, families have a strong sense of independence and self reliance. They rely on each other and the natural supports available through neighbors and other family members. However, in challenging times families need additional guidance, support, and information not available through casual connections. When a family has a member with a developmental disability, identifying what they need may come naturally, knowing how or where to find the resources to meet their needs, does not. Resources and supports are different in every community, and each family must navigate their way through the state, regional, and community supports. Creating collaborative systems to support families in their search is a priority of Idaho's citizens. It is for this reason the project has taken a series of strong steps to maximize the efforts of local, regional, and state systems of support to help families stay intact and thrive.

Our first step was to establish a statewide Policy Council to oversee and advise the activities of the project. The Council has 25 members across the state including advocacy groups, family members, and professionals. In addition one staff member from each of the seven Health and Welfare regions also attends to ensure our efforts with their programs can eventually be incorporated throughout the state. This active group meets quarterly to review our progress and make recommendations for future efforts.

(Attachment #1)

Our second step was to create a structure of information for families. We publish a quarterly newsletter, *Making Connections*, in both English and Spanish, to inform families of resources and current issues. We also launched a dynamic website, *Connecting Families* (connectingfamilies.net), that has information,

resources, and a database of information for families. The database has community as well as program resources. We are creating portions of the site for families to provide their expertise and share their ideas. We launched the site in September and it has been growing daily.

Our third step was to create a **community** model of support that helps families locate the resources they need. In the current system, families contact each program or resource individually, which makes it difficult for them to know who to contact. Families will tell you they have to make many phone calls in an effort get their questions answered. Some will just give up because the task is so overwhelming. Our Policy Council was extremely helpful in developing the structure and purpose of support to make all this easier.Their vision for the project outlines our approach to support:

Families should receive, from their communities, adequate and flexible resources and supports necessary to meet their family member's needs.

The group has also created a few principles to help guide our activities:

Family support recognizes that children and adults, regardless of the severity or type of disability:

1. Need families and enduring relationships in a nurturing home environment
2. Should be afforded the opportunity to live in typical homes and communities where they can fully participate as citizens with choices about how they reach their goals.

To accomplish their vision, the project established a Family Resource Center in Lewiston to support families in Region 2, which encompasses the rural counties of Latah, Nez Perce, Lewis, Idaho, and Clearwater. The FRC is located in the Developmental Disability Program Office in Lewiston. The project coordinator has worked closely with the Health and Welfare Family Support Program, although they are separate. Families currently call in to the FRC, explain their needs and develop a plan with our coordinator. The coordinator may contact churches, community groups, or help the family find an item they need. During our first year of the grant we were able to leverage grant to community funds at a rate of 1:3. Not all of our support is connected to funding, sometimes families need information, or suggestions on how they can solve a problem. Here are a few examples of how we have helped families:

A family requested a weighted blanket for their child to allow him to sleep better at night. Through our research we found directions on how to make this specialized blanket. A local sewing group was willing to sew the blankets if we received more requests and the pattern was placed on our website for others to use.

A mom lived in a rural area, had no car and was unable to transport her daughter to therapy. She found someone to take her daughter, but neither she nor the driver had a car seat. FRC talked with several churches, found one that would purchase a car seal for the family, and arranged for someone to deliver the seat to the family.

Your packet contains three letters written by families, who wanted to share with you how important this resource has been. We welcome any questions or clarification you may have as you read through their stories. Sarah Holt is also here to assist with questions.
I would also like to point out that in your packet you have a Year End Report providing specific information about our support to families. For example, you may be wondering what type of assistance families request. From the time we opened in February of *'05* until the end of the first fiscal year in September *'05* families have asked for:

- Assistive Devices

- Child Care
- Housing
- Housing Accommodations
- Medical costs
- Respite care
- Therapeutic Assistance
- Therapeutic Recreation
- Travel
- Training
- Other

You**'**ll notice that 18% of our requests fall in the "Other" category. This statistic isn**'**t surprising. If you talk with families they will often say their needs can**'**t always be categorized. They may be looking for a support group, advocacy information, requesting a used computer, training for siblings, or transition support.

Once a plan is completed we ask the family to fill out an anonymous evaluation of the FRC. Here are a few of their comments:

> "it is easy to access the services. There is not a lot of paperwork to complete and the supports that you can receive are very flexible."
>
> "1 think **it** is a wonderful resource for families with a member who has a disability."
>
> "I am indebted to your help and caring ways. I didn **'t** know such kindness still exists."
>
> "I**'**m not sure what I would have done without the assistance... .Homeless, jail, or death. Today I hold my head high. Thank you so very much."
>
> "When you are in need, **it** is nice to have a place to contact who can give suggestions."
>
> "Some families have no idea where to go for help, gel bogged down, and feel hopeless."
>
> "I felt like any support in these types of situations (like adjusting to having a child with a disability) is a BIG support and encouragement."
>
> "The help we have had is such a burden off our shoulders. It helps us get what our daughter needs to lead a normal life."
>
> (I would have lacked)... the knowledge for understanding the disability of our family member."
>
> (I would have felt...) alone and disconnected from others experiencing similar situation.

Families truly value this family centered, flexible approach to providing support.
As a result of our efforts a group called the Family Advisory Board (FAB) was formed consisting of families who live in the region, a significant number of which are families who have received some kind of support from the FRC. This enthusiastic group has met twice since November, decided to create their own governing board, elected a president and vice president, and began looking at the process of developing a nonprofit organization to help support the efforts of the FRC.

This unique combination of all resources both formal and informal, helps to encourage families to be a part of the solution. Rather than saying we help in one specific area, we support the family to decide what they need and look to the local communities, foundations, grants, and programs to meet their specific situation.

This type of family-centered planning empowers families.

Currently we are working to further combine the FRC and the Health and Welfare Family Support Program. The FRC is located in the same building as the Family Support Program and staff from both offices take in applications from families, talk about how to share funding, and both interact with families. We would like to make this process easier on families by combining systems. Hopefully by July families will have one contact, the FRC. Our staff will work with the families and if they qualify for funding from the Family Support Program, talk to their staff to verify eligibility for the program. This will provide only one contact for families for both programs and allow both programs to leverage further funds from the community.

It is our intention to open an additional FRC somewhere in the State sometime during our third year. At this point the location has not been decided. It is important that we have the major components in place and that the families have the opportunity to participate in the process. Building systems, collaboration and trust takes time.

We understand that resources are low for these families but that doesn**'**t mean our passion to support them is diminished. We believe that the answer for families does not come from any one place. We invite the Health and Welfare Committees from both the House and the Senate to follow our efforts to combine community as well as state resources and create one central entry point for Idaho families.

Thank you, Mr. Chairman, Jill Smith, Sarah Holt, and myself welcome any questions you may have.

CENTER ON DISABILITIES AND
HUMAN DEVELOPMENT
live learn work play

University of Idaho
College of Education

(Attachment #1)

IDAHO

FAMILY SUPPORT
360 PROJECT

Executive Summary
Idaho Family Support 360 Project

The Idaho Family Support 360 Project would like to request the opportunity to keep the Senate Health and Welfare Committee informed of our progress by providing information annually on the project and its collaborative efforts with the Idaho Department of Health and Welfare. The overarching goal of the project is to enhance and restructure the current systems of supports for Idaho families who have a member with a developmental disability living at home. This will be accomplished through a variety of state, regional, and community efforts. The project plan has three major components:

- The development of a statewide Policy Council with *25* members including families, advocates, and professionals to help guide the activities of the project.

- Development of a resource based website, *Connectingfamilies.net* to help families locate resources available in their own community, region, or within the state. In addition, the project will distribute a statewide newsletter informing families and professionals of current resources available to help support families.

- Implementation of a regional Family Resource Center to develop a central, collaborative network of supports utilizing local, community and state resources available to families. The Family Resource Center is located in the Developmental Disability Program office in Lewiston and supports families in the rural counties of Lewis, Idaho, Clearwater. Nez Perce, and Latah counties.

As a courtesy, we would like to inform the Senate Health and Welfare Committee of our progress. Our efforts demonstrate a collaborative strategy using a combination of state, regional and community resources for supporting families. We invite the state of Idaho to partner with our efforts to maximize existing resources to best meet the needs of Idaho families. We look forward to bringing the Committee up to date each year on our successes.

Julie Magelky
Project Director
Idaho Family Support 360 Project
Center on Disabilities and Human Development
University of Idaho
129 W. Third St.
Moscow, ID
83843
PHONE **(208) 885-3556**
FAX (208) 885-3628
E-Mail: jmagelky@uldaho.edu
WEBSITE: www.connectlngfamilies.net

(Attachment #2)

Family Support Policy Council

IDAHO

FAMILY SUPPORT 360 PROJECT

Lynda Bales
Idaho Department of Health and Welfare, Region 7
Idaho Falls, Idaho

Jim Baugh
Co-Ad, Inc.
Boise, Idaho

Marianne Birch
Parent Representative, Region 5
Burley, Idaho

Darlene Charlton
Children s Disability Foundation
Idaho Falls, Idaho

Ross Edmunds
Idaho Department of Health and Welfare
Boise, Idaho

Julie Fodor
Center on Disabilities and Human Development
Moscow, Idaho

Cameron Gilliland
Idaho Department of Health and Welfare
Boise, Idaho

Joann Grimmett
Parent Representative, Region 4
Mountain Home, Idaho

Wynette Howard
Idaho Department of Health and Welfare
Region 3
Nampa, Idaho

Jacque Hyatt
State Department of Education
Boise, Idaho

Hortencia Lemus
Hispanic Representative
Nampa, Idaho

Lauren Laskarris
Office of the Governor
Boise, Idaho

Julie Magelky
Center on Disabilities and Human
ent
Moscow, Idaho

Vickie Malone
Idaho Department of Health and Welfare,
Region 2
Lewiston, Idaho

Kathy McCarroll
Idaho Department of Health and Welfare
Region 5
Twin Falls, Idaho

Jon Meyer
Moscow, Idaho

Paul Norstog
Idaho Department of Health and Welfare
Region 2
Sandpoint, Idaho

Elizabeth Ricciardi
Parent Representative,
Region I
Coeur d Alene, Idaho

(Attachment #3)

Tracey Rushdi
Parent Representative, Region 6
Chubbuck, Idaho

Anna Smith
Idaho Department of Health and Welfare
Boise, Idaho

Karen Tharp
Idaho Department of Health and Welfare,
Region 6
Pocatello, Idaho

Susan Valiquefte
Idaho Parents Unlimited
Boise, Idaho

Nancy Wahobin
Native American Representative
Kamiah, Idaho

Tracy Warren
Idaho Council on Developmental Disabilities
Boise, Idaho

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 14, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:04 p.m., a quorum being present. He introduced his wife Janette and his daughter Cindy, who were visiting.

H 734 **Steve Millard, President, Idaho Hospital Association**, introduced **H 734, relating to Mental Illness**. This bill allows for physicians employed by a hospital to make decisions on whether a mentally ill individual should be detained at the hospital against their will for their protection and the protection of others. Under current law, only police officers have the authority to make that decision. Problems arise when an individual is brought to the hospital by someone other than a police officer. If the hospital provides mental health services, it can admit the individual for treatment, but if it does not, whether to detain someone becomes a dilemma. Currently, only seven hospitals in the state have the capability to provide treatment for mental illness. Without this legislation, the majority of hospitals in Idaho are faced with a choice of whether to hold the individual against his/her will and subject itself to false imprisonment claims, or to release the individual and put his/her or others' lives at risk. **H 734** also allows hospitals to transfer patients to facilities with mental health services, as long as they have correct permission to do so. Lastly, this bill contains word changes to increase clarity.

Senator Darrington asked about a bill passed earlier in the session and whether parole officers could be included in the term "peace officer." He also asked about hospital security for individuals who pose a violent danger when being held against their will. **Steve Millard** stated that this bill does not address security issues and he speculated on how the hospital would deal with those situations. Regarding the difference between peace officers and parole officers, he said parole officers will probably not be included as peace officers.

Senator Kelly asked why a hospital cannot call a police officer to take care of the situation instead of detaining someone without a hearing. **Steve Millard** answered that police officers can take care of the situation,

but they are not always available. Officers are often reluctant to make decisions on mental capacity without the proper training.

Senator Werk commented on the indication that there would be no fiscal impact and that this legislation might result in more individuals being committed to state institutions, which would translate into a cost for the state. He expressed concern over the word "evaluation." **Steve Millard** explained that evaluations are already performed in these situations. The additions of the word throughout the bill are for consistency. He anticipates no impact on the general fund.

There was discussion about the payment methodology for voluntary versus involuntary commitment.

Senator Kelly asked about the wording in the section of the bill covering 66-326, which reads, "physician medical staff member," and **Steve Millard** explained that the wording came about because a hospital is not a person, and a person had to be referenced in order to grant the authority to make the decision on detainment. The term "physician" alone would not suffice because it needs to be a physician on staff at the hospital where the mentally ill individual arrives. The term "medical staff" would not suffice either because it includes personnel other than physicians, and physicians are intended to receive the authority. This phrase resulted. **Senator Kelly** summarized that the intent of the legislation is to authorize licensed physicians, who are staff members at the hospital to which the patient is admitted, to make determinations about detainment. She asked whether there are physicians who work at a hospital who are not staff. **Steve Millard** stated that there are not.

Senator Kelly asked why a hospital should have the authority to transfer a patient to another facility for treatment, and **Steve Millard** explained that transfers are important because most hospitals in Idaho do not provide mental health services.

Kerry Ellen Elliott, lobbyist, Idaho Association of Counties, stated that the counties see no problems with the legislation and that it should help hospitals in smaller communities. Financial concerns will always be an issue and the system will continue to work as it has in the past.

MOTION: **Senator Broadsword** moved to send **H 734** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion.

Senator Werk expressed concerns about the fiscal statement. **Senator Kelly** expressed concerns about holding individuals without a hearing and allowing physicians to make the decision on detainment. **Senator Compton** stated that physicians have to make those determinations in current situations and this bill is to legitimize current practice.

The motion carried by a **voice vote**. **Senator Broadsword** will sponsor the bill on the floor.

PRESENTATION: **David Rogers, Administrator, Division of Medicaid**, presented an overview of the package of bills which make up the Medicaid Reform Package. A chart of the bills included, the topic each deals with, its

sponsors, and its current status in the legislature is included as an attachment (Attachment #1). The bills included in Medicaid Reform are **H 776, H 663, H 738, S 1290a, HCR 51, HCR, 53, HCR 49, HCR 48, HCR 50, HCR 52, H 664, S 1417, S 1318, and H 708.** He walked the committee through each of the bills and commented on the financial savings anticipated. The goal is to simplify the Medicaid system and break it into three tiers, as discussed at previous meetings.

Among the topics discussed by the committee during the presentation were how premiums would be addressed in rule, how the Deficit Reduction Act plays into the Reform, what impacts federal regulations will have on it, and how JFAC addressed it in the budget-setting process.

MINUTES: **Senator Broadsword** moved to approve the minutes from March 7. **Senator Darrington** seconded the motion. The motion carried by a **voice vote**.

ADJOURN: There being no further business, the meeting adjourned at 4:24 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

2006 Medicaid Reform Legislation (3/14/06)

1. Department-Drafted Reform Legislation, Presented to Medicaid Savings Task Force					
#	**Working Title**	**Subject**	**Sponsors**	**Introduction**	**Status**
H662 H776	Idaho Medicaid Simplification Act	Restructures Medicaid eligibility and benefits.	Block, Compton	House H&W 2/10/06	Passed the House 3/14/06.
H663	"Responsibility"	Establishes personal health accounts and co-pays.	Block, Compton	House H&W 2/10/06	DO PASS from House H&W 3/8, sent to general orders w/amendment
H0738	HIT	Establishes a health quality commission to plan HIT implementation and award provider grants, and to recommend quality and patient safety reporting.	Henbest, Speaker Newcomb, Black, Rusche, Stegner, Compton	State Affairs 2/24/06	DO PASS from House H&W 3/6/06.
2. Other Department-Drafted Reform Legislation, NOT Presented to Medicaid Savings Task Force					
S1390a	Caregiver Support	Establishes respite benefit for persons at risk of NF level of care. No fiscal impact. Not in Gov's budget.	Sen. Compton	Senate H&W 2/10/06	Passed Senate 3/6/06. May be heard in House H&W 3/16/07.
HCR 051	Managed Care Contracting C.R.	Will include 1) transportation, 2) incontinence supplies, 3) other DME. Not TCM. Other than incontinence supplies, not in Gov's budget.	Bilbao (Loertscher dropped)	House State Affairs 2/22/06	DO PASS from House H&W 3/8. On 3rd reading calendar in House for 3/15.
HCR 053	Required Medicare Enrollment C.R.	Requires dually eligible individuals to enroll in Medicare as a condition of Medicaid eligibility. Not in Gov's budget.	Garrett	House State Affairs 2/22/06	DO PASS from House H&W 3/8. On 3rd reading calendar in House for 3/15.
HCR 049	Medi-Medi Rx Coordination C.R.	Outsources coverage of Medicaid prescription drugs not covered by Medicare Part D to Medicare Advantage plans. In Gov's budget.	Rusche	House State Affairs 2/22/06	DO PASS from House H&W 3/8. On 3rd reading calendar in House for 3/15.
HCR 048	Mental Health C.R.	Limits MH benefits for low-income children and working-age adults. In Gov's budget.	Skippen	House State Affairs 2/22/06	DO PASS from House H&W 3/10.
HCR 050	Premiums C.R.	Spells out premium amounts. In Gov's budget.	Nielsen	House State Affairs 2/22/06	DO PASS from House H&W 3/10, with amendment.
HCR 052	Long-Term Care Counseling C.R.	Includes only Aging Resource Center counseling activity. In Gov's budget.	McGeachin	House State Affairs 2/22/06	DO PASS from House H&W 3/10.

(Attachment #1)

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 15, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:04 p.m., a quorum being present. He welcomed the guests in attendance. The agenda was adjusted as follows.

H 709a **Representative Mack Shirley** introduced **H 709a**, relating to **Reporting of Deaths**, as amended. He explained that one of the reasons behind the bill was a disturbing situation in Madison county which has highlighted the need to add a penalty clause to the law against failing to report a death. The current statute contains no penalty for failing to report a death even if it is intentionally concealed. This bill remedies the situation by clarifying the reporting procedures and adding two subsections on penalties. In subsection two, a misdemeanor is charged under certain conditions identified in Idaho Code, and in subsection three, a felony is charged for anyone who, with proven intent, fails to report or delays the reporting of a death to the proper authority.

Senator Compton asked the definition of the term “promptly.” **Representative Shirley** explained that the term helps to determine if there is an intentional delay, and the standard should allow a reasonable reporting period. **Heather Reilly,** of the **Idaho Prosecuting Attorneys Association,** explained that the term is used in current code and the Court of Appeals has ruled that words of common meaning are for the jury to decide. The standard is what is reasonable in the circumstances.

Senator Hill, cosponsor of the bill, read an article from the local paper in Madison county which referenced other cases of unreported deaths in Arizona and Ohio. Because there is no penalty for individuals who ignore this law, **H 709a** is necessary to aid law enforcement in upholding this law.

Senator Kelly asked whether teenaged mothers who fail to report the death of their child would be penalized under this legislation. **Heather Reilly** stated that there would be a penalty for the mother, but often these cases are prosecuted anyway because the child is usually found and

reported to the police. It would add another penalty to be charged against the mother. **Senator Kelly** asked if there were other circum-stances affected by the bill which the committee might overlook. **Heather Reilly** stated car crashes where the driver was under the influence or the car ended up in a body of water might be other situations to fall under the legislation, but it would be a stretch of the imagination to come up with every possible scenario.

Senator Werk asked if the legislation could interfere with religious freedom, and **Heather Reilly** answered that in Idaho Code, there is already an indication that nothing shall be construed to affect the tenets of any church or religious belief. In criminal law, there is no religious freedom defense. **Senator Werk** asked if religious belief could negate intent. **Heather Reilly** stated that it would probably be a jury question.

MOTION: **Senator Coiner** moved to send **H 709a** to the floor with a **do pass** recommendation. **Senator Broadsword** seconded the motion.

Senator Kelly asked if the legislation would apply to juveniles, and **Heather Reilly** said it would, but the penalties would be different.

The motion carried by a **voice vote**. **Senator Hill** will sponsor the bill.

H 719a **Dr. Christine Hahn, epidemiologist, Department of Health and Welfare**, gave a brief background in support of **H 719a**, relating to **Autopsies**. In 2005, Creutzfeldt-Jakob Disease (CJD) became reportable. As the Department began receiving reports, they ran into frustrations investigating them because, without an autopsy or brain biopsy, diagnoses remain unclear for CJD. In the past, this was not as important to public health, but since the incidents of Mad Cow Disease in Great Britain, and because both CJD and Mad Cow Disease are caused by a protein, it has become an important public health concern. The only way to isolate CJD is through tissue, and without autopsies, tissue samples usually cannot be obtained.

Representative Margaret Henbest explained that there has been a cluster of CJD cases in Idaho, and the only way to confirm the cause of the disease is to thoroughly evaluate the cases through autopsies. This bill, as amended, gives the state epidemiologist the responsibility of making sure an autopsy is performed. However, it is not a criminal issue, so a coroner cannot demand an autopsy if a family does not want one. There is a mechanism by which the family can opt out. Still, it is a strong directive on the importance of this issue.

Senator Compton commented that the wording simply states that if CJD is the “suspected” cause, an autopsy should be performed.

MOTION: **Senator Werk** moved to send **H 719a** to the floor with a **do pass** recommendation. **Senator Keough** seconded the motion.

There was discussion about the nay votes in the House. Those issues have been worked through.

The motion carried by a **voice vote**. **Senator Keough** will sponsor the

bill on the floor.

H 738a **Representative Henbest** introduced **H 738a**, relating to **Health Quality Planning**. This bill came about during Medicaid Reform as a way to help the state move forward in terms of Health Information Technology (HIT) and identifying the key indicators of quality health care. It creates a Health Quality Planning Commission consisting of both public and private participants to work on HIT and quality issues. The Commission would be responsible to report to the Director and the Legislative Health Care Task Force its final recommendation related to the development of a uniform, statewide, flexible and interoperable health information technology system, and to recommend a mechanism for the adoption of certain best practices in clinical quality assurance, patient safety standards, and reporting.

Senator McGee commented on the fiscal note and asked if it would be matched at the federal level, and **Representative Henbest** said it would.

Senator Werk asked about the limited life span of the Commission, and **Representative Henbest** explained that the Commission is time-limited because the final report is due June 30, 2007. **Senator Compton** commented that the report could include the need for the Commission's continued existence.

Dick Schultz, Administrator, Division of Health, Department of Health and Welfare, voiced his support for the bill. **Senator Compton** explained his motivation for cosponsoring the bill and how it will keep Idaho up with the pace of health technology available.

MOTION: **Senator McGee** moved to send **H 738a** to the floor with a **do pass** recommendation. **Senator Keough** seconded the motion. The motion carried by a **voice vote**. **Senators Compton** and **Stegner** will sponsor the bill on the floor.

MINUTES: **Senator McGee** moved to approve the minutes from March 8. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

Senator Coiner moved to approve the minutes from March 6, as corrected. **Senator Keough** seconded the motion. The motion carried by a **voice vote**.

ADJOURN: There being no further business, the meeting adjourned at 3:46 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 16, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:03 p.m., a quorum being present. He welcomed the guests in attendance and explained that time was limited because the Senate had to return to the floor at 4:00.

H 776 **Representative Sharon Block** introduced **H 776, Relating to Medicaid**. Rep. Block stated that the Health and Welfare Committees in both the Senate and the House have had as a priority for the past two sessions the task of addressing the unsustainable rise in the Idaho Medicaid Budget. The budget has grown at an average of 15.4% since 1987, and at this rate, Medicaid would soon surpass Idaho's expenditures for education. To address the issue, the legislative committees, the Department of Health and Welfare, and the Office of the Governor have collaborated to minimize the costs of Medicaid without sacrificing its services. Their efforts resulted in this legislation. The JFAC budget set this week reflects an increase of just 7.8%, which is far below the national average of 9%. This legislation is entitled The Idaho Medicaid Simplification Act, and it is the framework for the reform program. A number of companion bills will follow.

H 776 follows the recommendation of former Speaker of the House Newt Gingrich in his Medicaid Transformation Proposal, wherein he suggested that three categories be created to address needs on a more individualized basis. The three categories include: (1) Low-Income Children and Working Age Adults; (2) Persons with Disabilities or Special Needs; and (3) Elders. Eligibility and goals are outlined for each category, and benefits are tailored to meet their needs. Not only will this help slow the growth of Medicaid costs, but it also ensures the value per dollar in tax dollars. Finally, the bill will set policy direction in Idaho Code and allow the legislature to have greater control in the future. It is supported by the Idaho Association of Commerce and Industry (IACI), the Idaho Hospital Association, the Idaho Medical Association, the Idaho Primary Care Association, the Idaho Association of Health Plans, the State Independent Living Council, Comprehensive Advocacy, Inc. (CoAd), the Developmental Disabilities Council, and the Boise Metro Chamber of

Commerce.

Maria Wood, Centennial High School Student, Intern, Idaho Council on Developmental Disabilities, testified in support of the bill. She did a senior project on self-determination and said that this bill supports the tenets of her research.

Senator Broadsword asked what the most important aspect of self-determination was, according to Ms. Wood's studies. **Maria Wood** answered that the right and freedom to choose one's own life-course is the most empowering aspect of self-determination.

Ron Matthews, representing the **Idaho Community Action Network (ICAN),** testified in opposition to the bill. His testimony is included as an attachment (Attachment #1). The statistics he quoted were taken from the Center on Budget and Policy Priorities, and he included a copy of the report for the committee to look over (Attachment #2). He recommended a clause be added to the legislation which would state that if too many children were impacted by premiums and ended up with no insurance at all, then the premiums would be rescinded until reduced.

Senator Darrington reiterated that the present rate of Medicaid growth is not sustainable, and he asked whether Mr. Matthews had made any proposals to policy makers and budget writers in regard to how growth should be contained. **Ron Matthews** recounted his efforts over the last four years to encourage the state's participation in drug buy-in programs, heath care networks, and a long list of other recommendations.

Senator Werk asked if Mr. Matthew's main concern is the possibility of individuals losing coverage because of premiums, but that he supports the overall framework. **Ron Matthews** stated that there are good things about the overall framework if more definitive answers on how it was to be carried out were included in the legislation.

Karen McWilliams, also representing **ICAN,** testified with concerns about the hearing process for the decisions made in the bill. Her testimony is included as an attachment (Attachment #3).

Senator Compton asked about questions which Ms. McWilliams felt were unanswered throughout the hearing process. **Karen McWilliams** explained how newly-implemented co-pays for medications under Medicare were reducing the amount available for individuals to put into savings accounts, and that co-paying premiums would have the same effect.

Senator Werk asked David Rogers about wording in section 56-253(6) of the bill, which reads, *"The director may, subject to federal approval, enter into contracts for medical and other services when such contracts are beneficial to participant health outcomes as well as economically prudent for the medicaid program."* He asked which clause takes precedence: economics or health benefits. **David Rogers, Administrator, Division of Medicaid**, explained that short-term economic gains are actually long-term economic losses, and the wording can be read to give precedence to health benefits over economics. The clause "as well as" is a secondary

add-on to the primary intent of securing health benefits.

Senator Kelly requested a thorough presentation of the bill and it was scheduled for March 20, the following meeting.

Bob Seehusen, CEO, Idaho Medical Association, testified in support of the bill. It represents the first substantial change in 40 years, and it emphasizes prevention and wellness by motivating change in unhealthy behaviors. It may also assist people to attain private insurance. Although major cost savings will only occur over extended periods, the Association supports the innovative approach to remedy the unsustainability of Medicaid's current growth.

Senator Broadsword asked Mr. Rogers to explain the negotiated rulemaking process for those in attendance who wish to take part. **David Rogers** explained that there will be many points at which public input will be sought. The rules will be promulgated as temporary rules and come before the legislature for approval in 2007.

Senator Werk asked about the possibility of including a trigger rule to monitor for individuals and families which may drop-out of the program because of premiums. **David Rogers** explained that HCR 50, which deals with premiums, has a similar clause in it already.

The committee decided to continue the hearing on Monday.

Matt Haney, representing the **Idaho Community Action Network,** testified in opposition to the bill. He expressed concerns over the small amount of savings which will result from the reform, and that much of the savings JFAC saw this week was actually due to Medicare Part D. He stated that the reform would be an administrative nightmare in order to cater to three categories of needs, and that there are unnecessary steps like premiums and copays. He expressed doubt on the effectiveness of the personal health accounts.

Senator Broadsword stated that the intent of the legislation is less to save money than to treat people individually and cater to their needs. **Matt Haney** replied that the reform is being pushed as a cost savings.

MOTION: Due to time constraints, the rest of the hearing was suspended until March 20 and no motion was made on the bill at this time.

ADJOURN: There being no further business, the meeting adjourned at 3:45 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

Ron Matthews, ICAN

Mr. Chairman and members of the committee,

House bill 776 authorizes the Department of Health & Welfare to institute new premiums in the Medicaid program, in the "low-income children and working-age adults" group, between 133-150 percent of the poverty level.

It never says this specifically in the language, but let*s be honest — who we*re talking about here is kids. In the healthy population, the only ones who qualify for Medicaid at this income level are children — children on the Children*s Health Insurance Program — about 11,000 children.

We know from the experiences of other states that when new premiums are instituted for Medicaid recipients, a significant number of people lose their health coverage. In Vermont, 11% lost coverage in the first month. In Rhode Island, 20% lost coverage in three months. And in Oregon, 50% lost coverage. That*s bad for families, bad for providers, and bad for counties when costs are shifted.

According to this memo from the Center on Budget and Policy Priorities, running a predictive model on Idaho*s proposed premiums, these premiums could produce a coverage loss of more than 1,100 kids. This is considered a conservative estimate.

We understand that the Department of Health & Welfare hopes to off set these coverage losses by the creation of Personal Health Accounts. But we heard conflicting things coming out of the House Health & Welfare hearings about who will really pay the premiums. If low-income families have to pay the premiums out of pocket, then we will face the danger of coverage losses. If the state pays the premiums by putting savings from a prescription purchasing pool into the personal health accounts, then we*re creating a shell game — moving money around and creating new administrative hoops.

Given the lack of clarity, we think it would be prudent to insert a safeguard measure into the framework bill to prevent unintended coverage losses. For example, you could include a sentence in the premiums section that says, "If more than 5% of enrollees impacted by the new premiums are disenrolled following the institution of premiums, collection of premiums will be suspended until further review by the legislature."

I encourage you to take caution in your approach to these sweeping changes. Thank you.

(Attachment #1)

Mr. Chairman and members of the committee, Given by Karen McWilliams

I would like to address my comments to issues of process - both public process and the state-federal waiver process.

Public Process

The first opportunity for Medicaid recipients like myself to speak in a public forum about this proposal was the "listening sessions" held across the state back in January. But these were no substitute for real public hearings and a real debate.

I attended the listening session here in Boise and was very disappointed. There was no one there to answer any questions from the public. ICAN members from local areas around the state attended five of the listening sessions, and they were all the same. People had a lot of questions, but they didn*t get any answers. Without real answers to important questions, the meetings were a waste of everyone*s time.

The Department of Health and Welfare didn*t seem to want participation. The "listening sessions" were only posted on the website one week in advance, and all were held between 3-6pm when-most working-people-could--not-attend.

The summary posted later on the Departments website was also disappointing. The summary quotes Mr. Rogers saying, "I*m pleased with the support the community has shown us in our Modernizing Medicaid effort." We did not see support in these meetings – we saw serious concerns and unanswered questions. The summary on the website reads like an attempt to rewrite history and manufacture support that wasn*t there.

If proponents of this waiver proposal really believe the changes they*re making are good, why have they avoided a robust public debate? I believe there should be real public hearings, with real answers to questions, before any final decisions are made about changes to Medicaid.

Waiver Process

About the waiver process, the problem facing the legislature is you don*t know what you*re getting into until it*s too late. The "terms and conditions" document that comes out of the state*s negotiations with the federal government is the one that really matters. That*s the one that includes critical details like the financing agreement, for example.

It doesn*t make sense to me to vote to approve this waiver without getting to see the terms and conditions, It*s like giving a blank check.

(Attachment #2)

Center on Budget and Policy Priorities

820 First Street NE ▪ Suite 510 ▪ Washington DC 20002
(202)408-1080▪ fax (202)408-1056 ▪ center@cbpp.org ▪ www.cbpp.org

To: Interested Parties

From: Leighton Ku, PhD, MPH
Senior Fellow

Date: March 10, 2006

Subject: Enrollment Impact of Increased Premiums for Medicaid Children in Idaho

There is a substantial body of research, based on experiences in states across the nation, that higher premiums lead to reductions in Medicaid or SCHIP enrollment.[1] Some current enrollees drop off when they can no longer afford coverage and new applicants may be discouraged from joining. As a result, these individuals can become uninsured. Moreover, because of the way that premium policies are administered, a person who is unable to pay a premium for one or two months may be barred from regaining health coverage for several months.

This memo estimates the number of children who could lose coverage if the state of Idaho begins to charge monthly premiums of $10 per person for children in Medicaid or SCHIP whose incomes fall between 133 percent and 150 percent of the poverty line, which would apply to the 11,000 or so children with incomes in that range.

The estimates are based on research which I conducted about the effects of premiums on participation in several states, published in 2000.[2] This is the most commonly used model to estimate the effects of premiums in states around the nation. A key determinant of the enrollment reduction is the percentage of family income that must be used to pay for premiums. Higher premiums cause larger enrollment reductions.

To apply the model, I assume two typical patterns and apply each to half the children: (1) a three person family with one child participating and (2) a four person family with two children participating. The results are shown in the table below. Overall, I estimate that more than 10 percent of the children now covered, slightly less than 1,200 children, would lose their health insurance coverage if $10 monthly premiums are charged.

Scenario	$ per month	Premiums as % of income	% Reduction in participation	Enrollment reduction
(a) 1 child/3 person family	$10	0.51%	-7.9%	-433
(b) 2 child/4 person family	$20	0.85%	-13.3%	-734
Total			-10.6%	-1,167

These estimates are relatively conservative. For example, if I had assumed some share of one parent families or families with more children, the premiums would consume a larger share of income and more people would be estimated to lose coverage. These are simply estimates; the actual number of people who lose coverage could vary for a variety of reasons, including details about how the premiums are administered.

If you have any questions, please feel free to contact me at 202-408-1080.

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[1] Leighton Ku, "The Effect Of Increased Cost-Sharing In Medicaid: A Summary Of Research Findings," Center on Budget and Policy Priorities, Revised July 7, 2006. Samantha Artiga and Molly O'Malley, "Increasing Premiums and Cost Sharing in Medicaid and SCHIP: Recent State Experiences," Kaiser Commission on Medicaid and the Uninsured, May 2005.

[2] Leighton Ku and Teresa Coughlin, "Sliding-Scale Premium Health Insurance Programs: Four States' Experiences," *Inquiry* 36: 471-480 (Winter 1999-2000).

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 20, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:09 p.m. and welcomed the guests in attendance. Today's hearing on **H 776** is continued from March 16.

H 776 **David Rogers, Administrator, Division of Medicaid**, guided the committee through **H 776**, relating to **Medicaid,** also known as the **Idaho Medicaid Simplification Act.** The handout he used for his presentation is included as an attachment (Attachment #1). He explained legislative findings, the three-tiered system proposed, definitions, eligibility, benefits and limitations, and related pieces of legislation which have been generated this session. He noted the addition of prevention as a priority for all tiers, not just for Low-Income Children and Working Age Adults.

Senator Compton asked about the intended meaning of the term "finance," and **David Rogers** replied that it refers to both funding and funding structure.

Senator Darrington discussed with Mr. Rogers the powers and duties of the director to place individuals in the right program.

Senator Compton discussed with Mr. Rogers how Medicare can help lift the cost burden under this plan, returning the state to its position as a secondary, rather than a primary, payer. **HCR 53**, which the committee will hear soon, goes into more detail on this topic. **Senator Compton** commented that **H 776** would be the centerpiece if a collage of the legislation directing Medicaid Reform were hung on the wall. (The accompanying pieces of legislation are listed on page 7 of Attachment #1.)

Senator Darrington asked about a handout published by the Department of Health and Welfare which charts mandates by the federal government broken down by rule and by law. He asked if the services graphed in the chart would be altered by the current legislation. **David Rogers** stated that this legislation would not alter the service categories, but the exhibit

would change because reporting methods will probably change. **Senator Darrington** recommended that the reconfigured chart be made available once it has been altered because it is very useful.

Senator Coiner asked about mental health and what options are available if a client exceeds the limitations. **David Rogers** explained that there is a limit of 26 visits for outpatient mental health care, and a limit of 10 days for inpatients. The option available beyond these limits is to transition into the plan covering Special Health Needs by way of a Health Risk Assessment if there is, in fact, a mental health issue. In this way, the limits serve as a trigger. Throughout an inpatient's 10 days, he/she will be reviewed every 3 days by a contractor. Ten days is usually ample indication of a mental health issue.

Senator Werk asked if this legislation would add to bureaucracy, and **David Rogers** explained that administrative complexities under the current system are far more bureaucratic than they would be should this legislation pass. Currently, the Division of Welfare determines eligibility for Medicaid, but with **H 776**, the Division of Medicaid will have more direct access to determining eligibility. **Senator Werk** asked if there would need to be a realignment of the Department, and **David Rogers** stated that the Department has been moving in that direction for some time. **Senator Werk** commented on the difficulty the Department has had in finding a computer system to streamline its operations and asked if this legislation would make it more difficult. **David Rogers** stated that this bill helps to define what the Department needs in a computer system and that many commercial systems similar to what will be needed are already on the market.

Senator Compton asked about progress in developing an implementation plan, and **David Rogers** said the Department is working on it by communicating openly and frequently with contacts throughout the state. **Senator Compton** commended the Department for generating such important changes internally.

Senator Werk discussed with Mr. Rogers how the Department will respond to the changes.

Senator Compton announced that no testimony would be taken at this hearing because it was taken at the meeting on March 16.

MOTION: **Senator Darrington** moved to send **H 776** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senators Compton, Darrington,** and **Broadsword** will sponsor the bill on the floor.

Senator Compton expressed his appreciation for the Department's efforts in the restructuring process. **Senator Broadsword** echoed his appreciation.

DISCUSSION: **Senator Coiner** reported on the House hearing of **SCR 131**, on **Mercury Contamination.** He said the House Environment, Energy, and Technology Committee failed to pass the bill, and because it was a resolution, it could not be amended. He expressed concerns that some

committee members may have misread the text of the resolution.

The committee discussed the possibility of sending an official letter to the Department of Environmental Quality (DEQ). Although it would not be as influential as the resolution would have been, it would still have some impact on DEQ. **Senator Compton** commended **Senators Coiner** and **Kelly** for their work on the resolution.

MINUTES: **Senator Broadsword** moved to approve the minutes from March 9. **Senator Darrington** seconded the motion. The motion carried by a **voice vote**.

ADJOURN: There being no further business, the meeting adjourned at 4:15 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 21, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senators Brandt, Keough

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:05 p.m., a quorum being present. He welcomed the guests in attendance.

HCR 48 **Representative Kathy Skippen** introduced **HCR 48, Stating Findings of the Legislature and Encouraging the Department of Health and Welfare to Eliminate Partial Care Services for Low-Income Children and Adults without Serious Mental Health Disorders and to Limit Medicaid Mental Health Benefits for Low-Income Children without Severe Emotional Disturbance and Working-Age Adults without Severe and Persistent Mental Illness, Encouraging the Establishment of a Health Risk Assessment for Certain Individuals, Encouraging Continuing the Provision of Intensive Mental Treatment Benefits for Certain Individuals, Encouraging the Exploration of Modifications of Mental Health Benefits for Individuals with Disabilities for Special Health Needs and Requesting a Report to the Legislature.**

Rep. Skippen stated that **HCR 48** is a companion resolution to **H 776.** The focus of this legislation is to match mental health benefits to client needs in order to ensure that resources are directed to those Idahoans who most need Medicaid mental health services. This legislation should result in a $3 million savings to the General Fund.

Senator Compton summarized that the legislation would limit mental health visits to 26 visits for outpatient clients and to 10 days for inpatient clients. After that, the clients would be transitioned into an appropriate plan to take care of their mental health needs. The time limits help to determine whether there is a need for mental health services.

Rep. Skippen emphasized the importance of creating a Medicaid system which is diagnosis driven.

Senator Broadsword asked if the Department would report to the legislature through the germane committees with concrete evidence on

the successes and failures of the program. **Rep. Skippen** answered in the affirmative. **Senator Compton** recommended that **Senator Broadsword** draft a letter to the Department requesting this kind of report to present to the committee during the 2007 legislative session.

Senator Kelly asked if there is a difference between persistent mental illness in adults and serious emotional disturbance in children, and **Rep. Skippen** deferred to **David Rogers, Administrator, Division of Medicaid**. **David Rogers** explained that Idaho Code defines the two terms differently and that the children's definition differs because it contains functional criteria. **Representative John Rusche** added that both terms are legal terms, not clinical terms.

MOTION: **Senator Coiner** moved to send **HCR 48** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Coiner** will sponsor the bill on the floor.

HCR 49 **Representative John Rusche** introduced **HCR 49, Stating Findings of the Legislature and Encouraging the Department of Health and Welfare to Proceed with the Development and Design of Integrated Programs for Financing Medicare in such a way that Creates a Seamless Delivery System for Prescription Drug Benefits for those Individuals Dually Eligible for Medicaid and Medicare and which Reduces Program Costs and Requesting a Report to the Legislature. Rep. Rusche** stated that **HCR 49** directs the Department to integrate Medicaid and Medicare for dual eligibles in order to make these services more efficient and seamless.

Senator Broadsword asked if Medicare has a different formulary than Medicaid, and **Rep. Rusche** answered that Medicare has whatever formulary the client's insurance carrier uses, within boundaries set by Medicare. Medicaid has its own formulary and varies by state. Each carrier (Blue Cross, etc.) develops their own formulary. **Senator Broadsword** asked if the goal of **HCR 49** is to integrate these into one cohesive program, and **Rep. Rusche** affirmed.

MOTION: **Senator Broadsword** moved to send **HCR 49** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Broadsword** will sponsor the bill on the floor.

HCR 51 **Representative Carlos Bilbao** introduced **HCR 51, Stating Findings of the Legislature, Encouraging the Department of Health and Welfare to Contract with a Limited Number of Providers of Certain Medicaid Products and Services and to Seek Additional Opportunities for Consolidated Purchasing and Requesting a Report to the Legislature.** He stated that this legislation will result almost immediately in a savings for the state. It encourages Health and Welfare to purchase equipment and other supplies by using better business practices through a competitive bidding process. **Rep. Bilbao** serves as a finance chairman at a rural hospital which is part of a cooperative, and through the cooperative, a similar purchasing program saved the hospital about $1.4 million in the first year and $3.6 million over three years. As a result, he estimates the fiscal impact to be a greater savings than is reflected in the

resolution's fiscal note.

Senator Compton asked if the consolidated purchasing process for Medicaid can be compared to his hospital's cooperative because Medicaid is more fractured. **Rep. Bilbao** explained that purchasing is different than hospital operations and Medicaid could easily create a centralized distribution process for purchases. **David Rogers** said that it would depend on what is being purchased. He talked about two different approaches for how to carry out the directives in the resolution. Adequate access will need to be balanced with low pricing.

Senator Compton asked if the Division of Medicaid currently has a purchasing department. **David Rogers** stated that the Department has a contract management unit but it does not get involved in Medicaid provider agreements.

Senator Werk expressed concerns that quality would be lost if the Department contracts with a single, large provider for all products. **David Rogers** explained that access and quality measures are required by federal law governing Medicaid. There must be a balance between access, quality, and cost. **Senator Werk** asked whether this type of legislation would hurt small, local businesses because they may not be able to keep costs as low as large businesses. **David Rogers** said the Department has spoken with small businesses and this particular legislation might be advantageous to small businesses because of the large product volume Medicaid will need.

MOTION: **Senator McGee** moved to send **HCR 51** to the floor with a **do pass** recommendation. **Senator Darrington** seconded the motion. The motion carried by a **voice vote**. **Senator McGee** will sponsor the bill on the floor.

HCR 52 **Representative Janice McGeachin** introduced **HCR 52, Stating Findings of the Legislature and Encouraging the Department of Health and Welfare to Proceed with Development of a Long-Term Care Options Counseling Program as Part of the Planned Aging Resource Center Initiative and Requesting a Report to the Legislature.** She stated that this resolution would direct the Department to establish a long-term care options counseling program as part of the Aging Resource Center Initiative. It directs the Department to start a pilot program in three communities with a goal to promote alternatives to Medicaid-financed long-term care. There are many options for financing long-term care, including reverse mortgages, better use of tax incentives, public education campaigns, creating long-term care savings accounts, and developing the long-term care partnership plan established two years ago. The Department will report back to the legislature next session based on a study of the 14 people expected to enroll in the program.

Senator Darrington asked if the program would be funded by a federal grant, and **Rep. McGeachin** replied that the federal grant covers everything but personnel and operating costs. **Senator Darrington** asked if it would be funded in any aspect by Medicaid and what would happen when the grant terminates. **Rep. McGeachin** said that it is the duty of the Department to determine if the program would be cost-effective. If it is a poor use of taxpayers' dollars, the legislature can

abolish it.

Senator Compton expressed concerns about the Department getting involved in mortgaging. **Rep. McGeachin** stated that the intent of the program is to educate individuals on the options available for long-term care and not to get involved in the mortgage business. **David Rogers** commented that this resolution is part of the Department's plan to get ahead of the curve in terms of financing. The program is an information and referral business, not a reverse mortgage business.

There was discussion about how the 14 individuals would be tracked throughout the pilot program.

Senator Coiner asked how the fiscal impact figure was calculated, and **David Rogers** clarified the calculation process.

Senator Broadsword asked how this resolution would affect a piece of legislation passed in 2005 which allowed the Department to recoup costs from an individual's house once the individual had passed on. **David Rogers** explained that the money would be gathered up front instead, and the 2005 legislation shows how the Department is partially already in the housing business.

MOTION: **Senator Broadsword** moved to send **HCR 52** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Broadsword** will sponsor the bill on the floor.

MINUTES: **Senator McGee** moved to approve the minutes from March 16. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

Senator Broadsword moved to approve the minutes from March 14. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

Senator Werk moved to approve the minutes from March 15. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**.

ADJOURN: There being no further business, the meeting adjourned at 3:51 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 22, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:05 p.m. and expressed appreciation for the guests in attendance.

HCR 53 **Representative Sharon Block** introduced **HCR 53**, **Stating Findings of the Legislature and Encouraging the Department of Health and Welfare to Require Individuals Eligible for Medicare Parts A, B, and D to Enroll in Medicare as a Condition of Eligibility for the Idaho Medicaid Program and Requesting the Department to Report to the Legislature**. She said this is a companion bill to **H 776**, the **Idaho Medicaid Simplification Act**.

Senator Compton summarized what the committee already knew about the topics covered in **HCR 53,** as it had been discussed parallel to the companion legislation at previous meetings.

MOTION: **Senator Keough** moved to send **HCR 53** to the floor with a **do pass** recommendation. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**. **Senator Keough** will sponsor the bill on the floor.

H 663aa **Representative Sharon Block** introduced **H 663aa, Relating to Medicaid.** She explained that this bill is also a companion bill to **H 776** and is designed to promote healthy behaviors and personal responsibility. It establishes Personal Health Accounts and co-payments. The Personal Health Accounts are funded by a base amount which will be determined by Department rule. Additional amounts are added when an individual complies with recommended preventative care and demonstrates healthy behavior choices. The funds can be used for participant payments for preventative health products, services, co-payments, and premiums.

Rep. Block stated that co-payments are to increase personal responsibility of Medicaid recipients. The co-pays would apply to four areas: (1) for inappropriate use of emergency room in non-emergency cases which could be delivered in regular clinic settings, as determined by

the hospital provider; (2) for inappropriate use of Medicaid-funded emergency medical transportation; (3) for missed appointments with health care providers; and (4) for non-preferred prescription drugs, which are drugs not listed on the Preferred Drug List and is not a generic drug.

Senator Broadsword asked for an example of a preventative health product. **David Rogers, Administrator, Division of Medicaid**, responded that nicotine patches are a classic example.

Senator Kelly asked about the amendment which has been added to the bill. **Rep. Block** explained that the amendment was requested by the Pharmacy Association because the bill originally left a financial gap between the co-pay and reimbursement. In order to make sure the pharmacists are properly compensated for the drugs they administer to Medicaid recipients, and without overpaying them with both the co-pay and normal reimbursement, the amendment was added to fill the gap. Discussion on the amendment ensued. **Senator Kelly** asked how an individual would obtain medications if they were unable to meet the co-pay, and **David Rogers** explained that there would be no co-pay for generic drugs, so the individual could get the generic equivalent without having to pay the co-pay.

Senator Werk asked how the Department plans to enforce many aspects of Medicaid reform in instances where people refuse to pay premiums/co-pays etc. **David Rogers** explained that although terminating Medicaid is not a good option, the real goal behind the reform is to modify behavior patterns. It is not a punitive program but it is incentive-oriented.

Senator Kelly asked what would happen if someone used all the monies available through their Personal Health Account. **Rep. Block** stated that **HCR 50aa**, to be heard on March 23, covers that issue. Discussion followed. **David Rogers** explained how credits can be earned for the Accounts, using free immunizations as an example. The costs of the Account program which are not reflected in the fiscal note to **H 663aa** (this legislation) will be reflected in the fiscal note to **HCR 50aa**.

There was discussion about how the reform will operate and **David Rogers** referred to examples in Florida, which has a similar program that is about six months ahead of Idaho's. **Senator Compton** asked about the federal waiver needed to implement the reform and about the timing within the Department in relation to the reform. **David Rogers** said the Department is within a few weeks of being approved for the waiver.

Senator Darrington asked if computers can cover the extensive bookkeeping tasks required by a program like this. **David Rogers** said there are many off-the-shelf computer packages available that are suitable to keep track of the account balances, etc. in this program.

JoAn Condie, representing the **Idaho State Pharmacy Association**, spoke in appreciation for the amendment to the bill.

MOTION: **Senator McGee** moved to send **H 663aa** to the floor with a **do pass** recommendation. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**. **Senators Compton** and **McGee** will

sponsor the bill on the floor.

H 668

Representative Russ Matthews introduced **H 668, Relating to Medicaid - To Provide for the Investigation and Prosecution of Medicaid Fraud by the Office of Attorney General**. He stated that this bill will help to make sure the limited resources of Medicaid go to the people who really need them. It will facilitate the process of investigation and prosecution of Medicaid fraud cases by allocating the duties of investigating and prosecuting to the Office of Attorney General – an Office which is independent of the Department of Health and Welfare. Currently, Medicaid fraud is dealt with through the Department of Health and Welfare. Idaho is one of only two states which does not currently have a certified Medicaid control unit.

Rep. Matthews stated that the federal government has recognized the need to have an independent control unit by offering to pay most of the costs. By allocating these duties to the Office of Attorney General, Idaho will meet the requirements of the federal government and enter into the grant program, which provides 90% of the funding for the first three years and 75% of the funding every year thereafter. It is currently funded on a 50-50% basis. He said that more cases would be investigated and prosecuted if the Attorney General's Office were given these duties, resulting in more recoveries. By prosecuting cases, abuse of Medicaid can be deterred, and by using an independent office to investigate the cases, the public will be more confident in the process because there will be fewer perceived conflicts of interest.

Rep. Matthews spoke to the fiscal impact of $740,750.00, which would fund the start-up and transition phase as well as nine full-time employees. These funds are not matched on the federal level.

Senator Darrington asked if Rep. Matthews contends that Idaho's Medicaid fraud unit is not adequate or successful in proving fraud because it is not independent, being part of the Department of Health and Welfare. **Rep. Matthews** stated that, to his knowledge, the Department had only two full-time employees, where this bill would provide for nine. This bill would facilitate efficiency.

Senator Keough asked how many employees the Department has in their fraud unit. **Ray Ineck, Legislative Auditor**, responded that there are about three full-time positions which are not entirely dedicated to fraud. **Mond Warren, Bureau Chief, Bureau of Audits and Investigation, Department of Health and Welfare**, stated that there are 10 resources doing investigation ranging from food-stamps fraud to Medicaid provider fraud. **Senator Coiner** asked if the 10 resources were full-time investigators, and **Mond Warren** affirmed.

Kris Ellis, representing the **Idaho Supported Living Association, Idaho Assisted Living Association, and the Idaho Developmental Disabilities Agency**, testified in support of the bill. These groups support the legislation because it would facilitate transparency in the Department by having an independent source investigate fraud. There is a sense in the industry that providers are being treated unequally.

Senator Compton commented that providers could still perceive unequal treatment even if the investigators are independent. **Kris Ellis** said it would help in the appeals process and ease any fear of retaliation.

Senator Compton directed the committee to a handout from the Idaho Health Care Association and to a letter from the Attorney General's Office to Mond Warren (the handout packet is included as Attachment #1, booklet).

Mond Warren explained that the letter was written to him pursuant to an analysis requested by the legislative auditor on the recommendation to establish a Certified Medicaid Fraud Control Unit (MCFU). The letter reflected a concern that more research should go into the process before it is implemented.

Senator Darrington asked whether Mr. Warren had ever been directed by a supervisor within the Department of Health and Welfare to investigate a facility or individual without substantial cause and evidence. **Mond Warren** said no.

Sherman Furey, Chief Deputy, Idaho Attorney General's Office, explained the letter which he wrote to Mr. Warren. Mr. Furey stated that the Attorney General's Office believes this bill is a policy choice to be made by the legislature as to who will be responsible for investigating and prosecuting Medicaid fraud. It would work either through the Attorney General's Office or through Health and Welfare. When the legislation passed through the House, there were discussions about the financial implications of the change, but JFAC has assured them they would have the resources necessary to complete the process, should the legislature make a policy decision to that effect.

Senator Compton commented that it might be best to take time and work through the details. **Sherman Furey** and **Mond Warren** agreed.

Senator Keough expressed concerns about the Department's lack of staff and their heavy workload.

MOTION: **Senator Keough** moved to hold **H 668** in committee with the recommendation that more efforts be made to clarify the issue for next year. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

ADJOURN: There being no further business, the meeting adjourned at 3:55 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 23, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:05 p.m., a quorum being present.

HCR 50aa **David Rogers, Administrator, Division of Medicaid**, introduced **HCR 50aa**, **Stating Findings of the Legislature and Encouraging the Department of Health and Welfare to Establish Cost-Sharing in the Form of Premiums and Certain Idaho Medicaid Participants, Encouraging the Department of Health and Welfare to Permit Medicaid Participants to Pay Part or All of their Premiums Funds in Personal Accounts Assigned to the Participants and Held by the Department, Encouraging the Department to Join a Drug Purchasing Pool with the Resulting Savings to be Used to Fund the Personal Health Accounts and Requesting a Report to the Legislature.** He stated that this resolution is a directive to the Department to implement premium payments for Medicaid recipients whose household income is about 133% of the federal poverty level. Individuals with incomes between 133% and 150% of the federal poverty level would be required to pay a $10 per person per month premium and individuals with incomes between 150% and 185% would pay $15 per person per month. The extra $5 would be for dental care. Currently, individuals above 150% of the federal poverty level are required to pay the $15 per month premium, so it is not a new concept. The new aspect is how the premium is structured to include $5 for dental coverage, which is not now available.

Senator Compton asked what the equivalent coverage would cost if the individuals were not Medicaid eligible. **David Rogers** estimated that, for a child, the claims cost would be $120 -125 per child, including dental. Group plans, such as the Access Card program, cost about $55 per child. The whole package is about a $125 benefit package.

Senator Darrington questioned about the ability of the House to amend resolutions, quoting Joint Rule 6 of the Idaho Legislature Rules of the Senate which reads, "...Concurrent resolutions and memorials shall be printed as are bills... When passed in one house and transmitted to the

other, they shall be accepted or rejected only and shall not be subject to amendment." **HCR 50aa** was amended in the House, and if this rule prohibits amendments, it could weaken the resolution to have no force. **Senator Kelly** interpreted Joint Rule 6 to mean that a resolution cannot be amended once it has been sent to the other house for consideration, but it could be amended in the original house. Later in the meeting, it was clarified that the House can amend their own resolutions, whereas the Senate cannot, nor can the Senate amend House resolutions. Senate Rule 36(c) states that the Senate cannot amend resolutions, but the House has no such rule.

Representative Pete Nielsen continued the presentation on the resolution. He explained that the amendment came about because he wanted it. There was no opposition to the resolution, but he thought that the amendment would help to finance the resolution by encouraging Idaho to enter into a Drug Purchasing Pool.

Senator Werk pointed out that the $10 premium amount to be charged to individuals between 133% and 150% of the poverty level is actually worded "not more than ten dollars," whereas the $5 additional amount to be charged to individuals between 150% and 185% of the poverty level states specifically $5 and allows no room for adjustment should the need arise to lower that amount in order to keep people covered. **Rep. Nielsen** replied that the difference in language had gone unnoticed, but that the intent of the legislation was probably to specifically state $10.

Senator Werk asked what income a family of four would have if they lived at 150% of the poverty level. **David Rogers** estimated it would be about $35,000 annually. **Rep. Nielsen** said that a family with three children and two parents at 150% of the poverty level would have an income in excess of $30,000.

Senator Kelly asked how the amendment would save the state money. **Rep. Nielsen** explained that the state gets rebates by purchasing a certain amount of drugs and the rebate goes back into the general fund. Throughout the country, states are pooling together to get an even larger rebate. The additional revenues would help finance this resolution. **Senator Kelly** asked how the fiscal note was generated. **David Rogers** responded that the fiscal note on the legislation does not reflect the funding which the amendment would produce. An estimate from a contractor was that the rebate program would result in an additional $1.1 million in revenue, although that estimate is conservative and other entities have estimated an amount in excess of $8 million. No fiscal note has reflected this $1.1 million estimate, but the fiscal impact to the general fund really is not changed by the amendment. Rather, the change is that the general fund would be replenished by both premium payments and rebates instead of from just premium payments.

Senator Compton asked if the money generated would go into the Personal Health Accounts, and **David Rogers** said it would.

MOTION: **Senator McGee** moved to send **HCR 50aa** to the floor with a **do pass** recommendation. **Senator Broadsword** seconded the motion. The motion carried by a **voice vote**. **Senator McGee** will sponsor the bill on

the floor.

DISCUSSION: **Senator Darrington** asked the committee's approval for him to allow a charitable donations bill by the Hospitals Association to be printed to circulate for a year. **Senator Keough** stated that as long as the intent behind printing the bill is clear, it is a good idea to allow a possibly controversial bill to circulate for a year before coming before the legislature.

ADJOURN: There being no further business, the meeting adjourned at 3:35 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 28, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: Senator Darrington

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:08 p.m., a quorum being present.

H 833 **Senator Keough** presented **H 833**, relating to **Substance Abuse**. This legislation stems from the Joint Legislative Oversight Committee (JLOC) which is co-chaired by Senator Keough and Representative Henbest. It is a result of the work of the Office of Performance Evaluations. The bill comes from a study conducted by the Office in regards to substance abuse and how it is treated in Idaho. The report was released earlier this year revealing some discomforting information regarding the cohesion with which the state delivers substance abuse services. In an effort to get a better idea of where the money is going, how it is used, and whether it is effective, this bill puts together an interagency committee which brings together all the state entities that deal with substance abuse. It is modeled after the public transportation interagency, which underwent restructuring a few years ago and has had positive results. H 833 sets up who will be on the committee, how it will operate and report, and what its goals are.

Representative Margaret Henbest added that JLOC had much discussion on the report from the Office of Performance Evaluations and how various entities drawing from substance abuse dollars could come together to coordinate their efforts. It was important to JLOC members to avoid creating another government agency, so this bill uses existing agencies to form an interagency group.

Senator Broadsword asked about the fiscal note and how the program would be administered. **Representative Henbest** explained that the group would be housed within the Department of Health and Welfare and leaders of the group will be elected by the group on a rotating basis. Responsibility for the meetings would fall on whoever is the acting chairman. The meetings will become part of the job descriptions of its members, so it should not cost the state extra money.

MOTION: **Senator Broadsword** moved to send **H 833** to the floor with a **do pass** recommendation. **Senator McGee** seconded the motion. The motion carried by a **voice vote**. **Senator Keough** will sponsor the bill on the floor.

MINUTES: **Senator Broadsword** moved to approve the minutes from March 20, 21, and 22. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

APPRECIATION: **Senator Compton** expressed his appreciation for **Ashley Burke, Senate Page.** He commended her for her service and enthusiasm. He presented her with a letter of recommendation signed by all the members of the committee as well as a Senate watch. **Ashley Burke** thanked the committee for her experience and reported to them on her plans to study business in the future.

Senator Compton expressed his appreciation for **Katie Whittier, Assistant Secretary.** He commended her for the work she did for the committee and wished her well in her new career with the American Cancer Society. He presented her with a Senate watch as well. **Katie Whittier** thanked the committee.

DISCUSSION: **Senator Compton** referred to a Senate bill which had just come to the committee 20 minutes prior to the meeting. He asked **Steve Millard**, of the **Idaho Hospital Association**, about it.

Steve Millard explained that the bill was discussed at the committee's March 23 meeting as a bill which would be printed and held to be circulated for one year.

Senator Keough presented the committee with a copy of a bill which had been stalled in the House amending order. She expressed her hopes that the committee would look through it so that it could be buckslipped on the senate floor once the House sends it over, given the shortness of time in the legislative session. She said this bill, **H 832**, also resulted from the work of JLOC and the Office of Performance Evaluations. It seeks to modernize and update the Health and Welfare Board. This particular Board seems to have limited its oversight ability, and this bill would help to expand the Board so that it functions like other agency boards. A copy of the unofficial bill is included as an attachment (Attachment #1, Note: held with original minutes because of length).

Senator Compton encouraged the committee to ask questions on the genesis bill at this time. Since the bill is not officially before the committee and was not placed on the agenda, no vote will be taken on the bill and discussion is for educational purposes only.

Representative Henbest explained why the bill was sent to the amending calendar. Two issues came up: the fiscal note and language on the last page (which was ultimately deleted) which gave the newly-formed Board the responsibility for evaluating the performance of other advisory boards in the Department of Health and Welfare. As testimony went forward, it became clear that there is a multitude of advisory boards that sometimes serve very independent functions. Because of the

confusion, the language was deleted. The fiscal note was changed to be more detailed after further investigation.

Senator Compton asked if there could be any difficulty instituting the change at a time when two governors will take office in a short period of time. **Representative Henbest** stated that she saw no difficulty because it is more of a policy issue than an administrative issue. **Senator Kelly** expressed her support and added that the administration changes may be advantageous because it would facilitate the definition of the Board's role.

Senator Coiner pointed to language on page 3 of the bill and asked about the ability to remove members "for cause." He asked whether this is the usual practice for boards, and **Representative Henbest** said it is.

Senator Brandt expressed his support for the bill.

Senator Broadsword asked if the Office of Performance Evaluations looked at the changes in the Board's authority over history. **Rakesh Mohan, Director, Office of Performance Evaluations,** answered that although they did not look at its history, it was evident from the minutes of the Board meetings that the Board was limited.

Senator Compton spoke about the role of boards to government agencies in advice and counsel.

There was discussion about the schedule for committee meetings from this time forward.

MINUTES: **Senator McGee** moved to approve the minutes from March 23. **Senator Kelly** seconded the motion. The motion carried by a **voice vote**.

Senator Broadsword expressed her appreciation for **Senator Compton** as the Chairman of the committee. The committee echoed her sentiments.

ADJOURN: There being no further business, the meeting adjourned at 3:40 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant

MINUTES

SENATE HEALTH AND WELFARE COMMITTEE

DATE: March 29, 2006

TIME: 3:00 p.m.

PLACE: Room 437

MEMBERS: Chairman Compton, Vice Chairman Broadsword, Senators Darrington, Brandt, Keough, McGee, Coiner, Werk, Kelly

ABSENT/ EXCUSED: None

GUESTS: The sign-in sheet(s), and/or booklets, charts, and graphs, will be retained with the minutes in the committee's office until the end of the session, and then will be on file with the minutes in the Legislative Services Library (Basement E).

CONVENED: **Chairman Compton** called the meeting to order at 3:08 p.m., a quorum being present.

MINUTES: **Senator McGee** moved to approve the minutes from March 28. **Senator Coiner** seconded the motion. The motion carried by a **voice vote**.

H 832 - DISCUSSION **Senator Keough** introduced for discussion **H 832,** relating to the **Board of Health and Welfare,** which remains on the second reading calendar in the House. If it comes to the Senate before the legislature adjourns, she said she may try to buckslip it, with the committee's approval. An unofficial copy of the bill was circulated for their review (Attachment #1). This could be a monumental change, and since it is coming late in the session, she said she would understand if they should wait on the issue.

Senator Compton stated that if there is an opportunity to address it, they certainly will. Otherwise, it may come back in 2007.

Senator Compton read a letter written by **Katie Whittier, Senate Secretary**, expressing appreciation for her experience working with the committee.

Senator Compton reported that the respite care bill the committee worked on failed in a tie-vote on the House floor today.

DEQ LETTER DISCUSSION The committee discussed drafting a letter to the Department of Environmental Quality (DEQ) encouraging them to compile data on the mercury issue in Idaho and asking that they report to the committee in 2007. A draft of the letter is included as an attachment (Attachment #2).

MOTION: **Senator Darrington** moved to send a letter to DEQ requesting a report to the 2007 Senate Health and Welfare Committee on the issue of mercury in Idaho. **Senator Coiner** seconded the motion. The motion carried by a **voice vote**.

APPRECIATION: **Senator Compton** expressed his appreciation to **Joy Dombrowski, Committee Secretary,** for her service to him and to the committee. He presented to her a bouquet of flowers and a card. She stated that it was a pleasure to work with the committee.

ADJOURN: There being no further business, the meeting adjourned at 3:16 p.m.

Senator Dick Compton
Chairman

Joy Dombrowski
Secretary

Kathryn Whittier
Assistant