

MINUTES  
**SENATE HEALTH & WELFARE COMMITTEE**

**DATE:** Thursday, January 23, 2020

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

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Martin, Vice Chair Souza, Senators Heider, Burtenshaw, Bayer, Jordan, and Nelson

**ABSENT/ EXCUSED:** Senators Lee and Harris

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Martin** called to order the meeting of the Senate Health and Welfare Committee (Committee) at 3:00 p.m.

**RS 27420C1** **Vice Chair Souza** presented **RS 27420C1**, which allows for cannabidiol (CBD) oil, a derivative of hemp with 0.3 percent tetrahydrocannabinol (THC) or less, that Idahoans may use for possible pain relief. It also recognizes that there are currently available in Idaho, by prescription, several legal, FDA-approved, cannabinoid medications offering high levels of THC or CBD for the treatment of various conditions.

**MOTION:** **Senator Jordan** moved to print **RS 27420C1**. **Senator Bayer** seconded the motion. The motion carried by **voice vote**, with **Senator Burtenshaw** requesting he be recorded as voting nay.

**PASSED THE GAVEL:** Chairman Martin passed the gavel to Vice Chair Souza.

**DOCKET NO. 16-0309-2001** **Department of Health and Welfare, Medicaid Basic Plan Benefits. David Welsh**, Bureau Chief over Care Management, Division of Medicaid, Department of Health and Welfare (Department), stated the Department is asking for an extension on this temporary rule. The purpose of this docket is to remove all IDAPA references to the Institutions for Mental Diseases (IMD) exclusion. This docket supports S 1204 (2019) which required the Director of the Department to research options and to apply waivers for substance abuse and/or mental health services in IMDs. Historically, IMDs have not been eligible to receive Medicaid payment for services provided to individuals aged 21-64. In recent years, the federal government has provided new mechanisms and authorities for states to finance IMD services for non-elderly adults through Medicaid in certain situations. **Mr. Welsh** stated the Department did not engage in negotiated rulemaking because this is a temporary rule; however, the public comments received were overwhelmingly positive. Without a waiver in place, the only option for patients with serious mental illness is admission to the psychiatric unit of an acute hospital, which is the most expensive setting of all for psychiatric treatment. See attachment 1.

**MOTION:** **Senator Nelson** moved to approve **Docket No. 16-0309-2001**. **Senator Jordan** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
16-0309-1803**

**Department of Health and Welfare, Medicaid Basic Plan Benefits. Michael Case**, Policy Program Manager, Division of Medicaid, Department of Health and Welfare, indicated that he would be presenting two companion dockets related to children's intervention services and support. **Mr. Case** first addressed **Docket No. 16-0309-1803**. He stated that he would be referring to the State Plan and to 1915(c) waivers and explained what those were. See attachment 2. He explained that in 2014, CMS directed states to move intervention services for children with autism spectrum disorder from a home and community-based 1915(c) waiver into the State Plan. These rules are being revised to comply with this mandate.

**Mr. Case** said, given the mandate, the Department chose to move all children's intervention services (not just those for children with autism spectrum disorder) out of the 1915(c) waivers, cover the intervention services as State Plan Basic Plan Benefits, and allow the 1915(c) children's waivers to expire on June 30, 2019. To align Idaho's administrative rules with these coverage changes, the descriptions of intervention services were moved from IDAPA 16-03-10 into IDAPA 16-03-09 where State Plan Basic Plan Benefits are described.

**Mr. Case** indicated that without these changes, the Department would not be able to offer intervention services to children under the State Plan or revert back to offering those services under the 1915(c) waiver, because they would have expired.

**DISCUSSION:** Committee discussion referred to interventions and that stimuli not be painful. An inquiry was made regarding vocational and educational services.

**MOTION:** **Chairman Martin** moved to approve **Docket No. 16-0309-1803**. **Senator Nelson** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.  
16-0310-1806**

**Department of Health and Welfare, Medicaid Enhanced Plan Benefits. Mr. Case** said this is a companion docket to the one previously presented. The previous docket made changes to support services, and this docket will describe the deletions and restructuring that were required in order to accomplish the changes. The 1915(i) support services were revised concerning respite, family education, community-based supports, and family-directed community supports. **Mr. Case** said that the changes in these two dockets are dependent upon one another, and the stakeholder engagement was the same. It included stakeholder engagement for more than four years and a Children's Enhancement Project Team was formed. Meetings were held monthly to discuss needed changes. The draft rule was published July, 2018 and nine public meetings were held to gather public feedback. The draft rule was revised and presented between September 2018 and March 2019. The temporary rule went into effect July 1, 2019. See attachment 3.

**DISCUSSION:** **Senator Jordan** asked about the reference to "restrictive words" and if that would affect quality or delivery of services. **Mr. Case** replied that they would not affect services; rather, the removal of "restrictive words" would make it less burdensome on the providers of the services.

**MOTION:** **Senator Heider** moved to approve **Docket No. 16-0310-1806**. **Senator Jordan** seconded the motion.

**DISCUSSION:** **Chairman Martin** read the analysis from the Legislative Services Office. It stated: "These temporary and proposed rules transfer some children's intervention services from a waiver to the Medicaid's State Plan. These changes are necessary for Idaho to continue to receive federal financial participation for these services. The Governor finds that the temporary rules are justified because the rules confer a benefit and are necessary for continued federal funding."

**VOICE VOTE:** The motion to approve **Docket No. 16-0310-1806** carried by **voice vote**.

**DOCKET NO.  
16-0318-1901**

**Department of Health and Welfare, Medicaid Cost-Sharing. Ali Fernandez**, Bureau Chief for the Bureau of Long Term Care, Division of Medicaid, Department of Health and Welfare, presented this docket. The rules are being amended to accomplish two objectives associated with participating cost sharing for home and community-based services. They are to clarify exemptions and to update the personal needs allowances used in the cost-sharing calculation to align with federal requirements. Exempt participants are Native Americans and Alaskan Native participants, as well as participants who are eligible via the Medicaid for Workers with Disabilities program. This rule simplifies the calculation for cost-sharing by streamlining the personal needs allowance figures and ensures that a member retains enough disposable income to cover living expenses not covered by Medicaid, such as rent, utilities, and food. This change will result in ongoing savings of up to \$46,606.20 per year. These savings are realized from the corresponding increase in cost-sharing that some participants will experience due to their personal needs allowance decreasing. Approximately 30 participants currently receiving services will experience an increase. See attachment 4.

A negotiated rulemaking session was hosted on June 18, 2019, and a public hearing on October 8, 2019. Three comments were received. One comment was in support for both components of this rule change and two expressed concerns. Aligning the personal needs allowance will ensure the Centers for Medicare and Medicaid Services (CMS) continues to authorize the administration of Idaho's home and community-based services programs.

- DISCUSSION:** **Ms. Fernandez** discussed the extra costs due to more participants and the total number of program participants.
- MOTION:** **Chairman Martin** moved to approve **Docket No. 16-0318-1901**. **Senator Heider** seconded the motion. The motion carried by **voice vote**.
- PASSED THE GAVEL:** Vice Chair Souza passed the gavel to Chairman Martin.
- ADJOURNED:** There being no further business at this time, **Chairman Martin** adjourned the meeting at 3:45 p.m.

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Senator Martin  
Chair

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Margo Miller  
Secretary

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Juanita Budell  
Assistant to the Secretary