

**Idaho Board of Health and Welfare Minutes
November 7-8, 2002**

The Board of Health and Welfare convened at:
Pete T. Cenarrusa Building
450 W. State Street, 10th Floor CR
Boise, Idaho

Call To Order

Chairman Kenyon called the meeting to order at 12:30 p.m.

Roll Call

Janet Penfold, Secretary, called the roll.

Board Members Present:

Quane Kenyon, Chairman
Marti Calabretta, Vice Chairman
Janet Penfold, Secretary
Bert Henriksen, Member
Dan Fuchs, Member
Robert Barlow, Member
Dr. Richard Roberge, Member
Representative Thomas Loertscher (Ex-Officio Member)

Ex-Officio Member Excused:

Senator Grant Ipsen (Ex-Officio)

Department of Health and Welfare Staff Present:

Karl Kurtz, Director
David Humphrey, Deputy Director
Joyce McRoberts, Deputy Director
Bill Walker, Communications Officer
Sherri Kovach, Administrative Procedures Section (APS)
Dick Schultz, Health
Ken Deibert, FACS
Joe Brunson, Medicaid
Chuck Halligan, FACS
Ed Van Dusen, FACS
Mary Jones, FACS
Russ Duke, Health
Debby Ransom, Medicaid
Pharis Stanger, FACS
Mary Jo Beig, DAG
Beverly Barr, APS
Ken Mordan, APS
Frank Powell, APS

Others Present

Pat Kelly, IHHCP
Bette Newborn, IHHCP
Mark Franklyn, IHHCP
Deb Dayton
Donna Franklyn, IHHCP

Rep. Bill Sali
Mary Spiker
Aaron Houson, Advocacy & Learning Association
Amy Brown, Advocacy & Learning Association

Public Comment Period

Chairman Kenyon opened the floor for public comment for 15 minutes on any subject not specifically shown on the agenda. Dr. Roberge reported he attended the Open House for the Idaho State School and Hospital's new facility and was very impressed with the building. He stated the facility is a vast improvement to the previous buildings and the State of Idaho, Department and Board should be proud of the new facility, and with the Department's ability to provide care and services for patients who are in need.

Agenda Item #1: Patrick D. Kelly vs. Department of Health & Welfare

Appeal No. 02-CC0323-0319 (Oral Argument for Final Decision and Board Deliberation)

Patrick Kelly and Mary Jo Beig, Deputy Attorney General for the State of Idaho, Department of Health and Welfare, were each given one-half hour to present oral argument regarding the hearing officer's decision denying Mr. Kelly's application to license Country Acres Shelter Home as a 4-bed certified family home. The Board deliberated with all parties present.

Motion: Dr. Roberge moved to affirm the hearing officer's decision, which denied Mr. Kelly's application to license Country Acres Shelter Home as a 4-bed certified family home.

Second: Bert Henriksen

Roll Call Vote: Motion carried.

Dr. Roberge – Aye
Mr. Henriksen – Aye
Mr. Fuchs – Aye
Mr. Barlow – Aye
Ms. Penfold – Aye
Ms. Calabretta – Aye
Mr. Kenyon – Aye

Agenda Item #2: Approval of Board Minutes

Chairman Kenyon presented the minutes of the May 14, 2002 meeting for adoption.

Motion: Dr. Roberge moved for approval of the minutes of the May 14, 2002 Board Meeting, with amendments to Item #4 under the "motion to adopt," be corrected to Docket No. 16-0210-0201, and "Ms." be amended to "Mr."

Second: Robert Barlow

Vote: Motion carried. 7 Ayes 0 Nays 0 Absent

Agenda Item #3: Director's Report

Karl Kurtz, Director, reported on the status of the Department's realignment and consolidation process, and how changes made thus far have helped minimize the impact of the 2003 holdbacks. Challenges with the 2004 budget have been identified by JFAC and the Committee has asked for the Department's recommendations and suggestions on how to address the shortfall. Mr. Kurtz reported the next phase of the integration and consolidation project is the integration of services—"any door is the right door" for clients needing services. Mr. Kurtz reported Healthy Connections has exceeded the enrollment goal it had set for November.

Mr. Kurtz also reported on the Department's involvement with the Health & Human Services Subcommittee of the Governor's 2020 Blue Ribbon Task Force. Some cost savings items have been identified, e.g., the further development

and implementation of a preferred drug list, looking at dual eligible coverage (eligible for both Medicare and Medicaid), and continued evaluation of DD/MH services. The recommendations of the subcommittees will be forwarded to the Task Force for their review and final recommendations to Governor Kempthorne and state agencies.

Agenda Item #4: Introduction and confirmation of newly appointed

Regional Director, Region IV

Joyce McRoberts introduced Randy Woods, newly appointed Director in Region IV. Mr. Woods has been with the Department for 28 years and recently moved from his post as Self Reliance manager to Region IV Director. Mr. Woods stated he is pleased to be part of the leadership team, and although the state is facing a budget crisis, knows there are opportunities to do some streamlining and build community collaboration.

Motion: Bert Henriksen moved to confirm the appointment of Randy Woods as Regional Director, Region IV.

Second: Janet Penfold

Vote: Motion carried. 7 Ayes 0 Nays 0 Absent

Agenda Item #5: Omnibus Rule Change

Docket No. 16-0000-0201 (Pending)

Ray Millar, Alternative Care Coordinator for the Bureau of Medicaid Benefits and Reimbursement Policy, gave a brief overview of the rule amendments in this docket and stated there are no substantive changes in these rules. Mr. Millar reported the 2002 Legislature passed House Bill 406 dealing with licensure laws, which amended titles of social workers. The Rules of the Idaho Counselor Licensing Board were also amended in 2002 to amend the title for Licensed Counselors. These rules were amended to provide consistency for current law and licensure rules and will not negatively impact providers.

Motion: Bert Henriksen moved that the Idaho Board of Health and Welfare adopt as pending, the Omnibus Rule Change as presented in the final proposed under Docket No. 16-0000-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Dan Fuchs

Vote: Motion carried. 7 Ayes 0 Nays 0 Absent

Agenda Item #6: Rules Governing Human Immunodeficiency Virus HIV)

Related Services Docket No. 16-0205-0201 (Pending)

Russ Duke, Bureau Chief for Clinical and Preventive Services, reported that this is a new chapter of rules and that the STD/AIDS program receives federal and state funding to provide HIV related services to eligible individuals. Administrative rules are being promulgated to help guide the planning and disbursement of funds from the federal Ryan White CARE Act and the state supported AIDS Drug Assistance Program.

Discussion ensued and questions entertained regarding the number of individuals in Idaho who have tested positive for HIV, eligibility criteria, how medications/treatments are paid for, and funding sources. Mr. Duke stated approximately 700 HIV positive individuals have been identified; the Department provides funding to community based organizations and also district health departments and physician offices that participate in this program, and they in turn provide the case management/services/treatment for the patient. Approximately \$180,000 in general funds and \$900,000 - \$1,100,000 federal funds is designated to this program.

Motion: Marti Calabretta moved that the Idaho Board of Health and Welfare adopt as pending, the Rules Governing Human Immunodeficiency Virus (HIV) Related Services as presented in the final proposal under Docket No. 16-0205-0201, with the rules becoming final and effective immediately upon the adjournment since die upon prior review by the 2003 Legislature.

Second: Dr. Roberge

Vote: Motion carried. 7 Ayes 0 Nays 0 Absent

Agenda Item #7: Rules Governing Idaho Reportable Diseases

Docket No. 16-0210-0201 (Temporary/Proposed)

Dr. Christine Hahn, Epidemiologist for the Division of Health, gave a brief overview of these rules stating that Idaho reportable diseases are regulated under these rules. The definition section has been updated to define waterborne outbreaks, the definition of "week" has been deleted and the incorporation by reference section has also been updated. Five conditions detectable by newborn screening were added to the reportable disease list, as were three infectious diseases, which include pneumococcal invasive disease in children less than 18 years of age, smallpox and waterborne diseases. The rules were also amended to require data reporting on cancers. The timeframe for reporting some diseases has been reduced from seven days to three days.

Motion: Robert Barlow moved that the Idaho Board of Health and Welfare adopt as pending, the Rules Governing Idaho Reportable Diseases as presented in the final proposal under Docket No. 16-0210-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Dan Fuchs

Vote: Motion carried. 7 Ayes 0 Nays 0 Absent

Agenda Item #8 Rules Governing Procedures and Testing to be Performed on Newborn Infants Docket No. 16-0212-0201 - Repeal - Pending)

Dick Schultz, Health Division Administrator, requested a repeal of the entire chapter of rules under Docket No. 16-0212-0201, as a significant number of changes were made to the rules and it was deemed more appropriate to re-write the updated chapter of rules.

Motion: Marti Calabretta moved that the Idaho Board of Health and Welfare adopt as pending, the Rules Governing Procedures for Newborn Testing as presented in the final proposal under Docket No.16-0212-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Dan Fuchs

Vote: Motion carried. 7 Ayes 0 Nays 0 Absent

Agenda Item #9: Rules Governing Procedures For Newborn Testing – Docket No. 16-0212-0202 – Re-Write (Pending)

Russ Duke, Bureau Chief for Clinical and Preventive Services, requested the approval of the new temporary rules, which replace the repealed rules under Docket No. 16-0212-0201. Mr. Duke gave a brief summary of changes, which include preliminary sections making the rules consistent with the requirements of the Department of Administration. The Definitions Section 010 was updated to reflect current technology and to include only those definitions that are relevant to the new set of rules. Mr. Duke called attention to Section 100.01, Conditions For Which All Infants Will Be Tested, which clearly specifies the five conditions that will be mandated for testing of all infants born in Idaho: biotinidase deficiency, congenital hypothyroidism, galactosemia, maple syrup urine disease and phenylketonuria. Newborn testing will no longer be funded by the State, so the Department will offer laboratory services with a fee charged for the test kits. The cost is collected up-front and includes analytical and diagnostic services.

Motion: Marti Calabretta moved that the Idaho Board of Health and Welfare adopt, as pending, the Rules Governing Procedures for Newborn Testing as presented in the final proposal under Docket No.16-0212-0202, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Janet Penfold

Vote: Motion carried. 7 Ayes 0 Nay 0 Absent

Agenda Item #10: Rules Governing Minimum Standards for Hospitals in Idaho, Docket No. 16-0314-0201 (Pending)

Debby Ransom, Bureau Chief of Facility Standards, reported the time frame requirement for hospitals to take a medical history and perform a physical examination is being expanded to no more than seven (7) days before or forty-eight (48) hours after hospital admission. The changes are noted in order to align the hospital rules with the Code of Federal Regulations (42 CFR 482) and to make the rules consistent with the current national standards for hospital care. Ms. Ransom stated that the Idaho Hospital Association is in full support of the change.

Motion: Robert Barlow moved that the Idaho Board of Health and Welfare adopt as pending, the Rules Governing Minimum Standards for Hospitals in Idaho as presented in the final proposal under Docket No. 16-0314-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Bert Henriksen

Vote: Motion carried. 7 Ayes 0 Nay 0 Absent

Agenda Item #11: Rules Governing Residential Care Facilities & Assisted Living Facilities Docket No. 16-0322-0201 (Pending)

Debby Ransom, Bureau Chief for Facility Standards, reported changes are needed in order to bring rules into compliance with SB 1365 (2000) regarding the Board and Care and Residential Care Act. The Department intends to update chapter title and add "or authorized provider" to all sections which refer to physician, update definitions and as per changes in statutes cited above, make updates regarding the following: inspection of facilities, unannounced inspections, resident's rights, administrator qualifications, negotiated service agreement, resident's records, menu planning, modified or therapeutic diets, and building construction and physical standards.

Motion: Dan Fuchs moved that the Idaho Board of Health and Welfare adopt as pending, the Rules Governing Licensed Residential and Assisted Living Facilities in Idaho as presented in the final proposal under Docket No. 16-0322-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Janet Penfold

Vote: Motion carried. 7 Ayes 0 Nay 0 Absent

Agenda Item #12: Rules Governing Developmental Disabilities Agencies, Docket No. 16-0411-0201 (Pending)

Chairman Kenyon acknowledged several guests attending the meeting from Pocatello who presented brief testimony on this docket. The guests stated they had had concerns regarding the type of degree required for individuals who work with children with developmental disabilities; however, they are pleased with the changes the Department made in response to public comment hearings. Mary Jones, Acting Bureau Chief for Developmental Disabilities, reported rule changes are needed to clarify provider qualifications for Intensive Behavioral Intervention (IBI) certified providers who deliver services through a Developmental Disabilities Agency (DDA). Current IBI provider qualifications allow an IBI professional to have one of a number of degrees listed in rule. The rule allows for "related degrees," which is being clarified by this amendment. Title changes for counselors and social workers enacted by the 2002 Legislature are being made to bring the rules into compliance with those changes.

Motion: Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as pending, the Rules Governing Developmental Disability Agencies in Idaho as presented in the final proposal under Docket No. 16-0411-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Robert Barlow

Vote: Motion carried. 7 Ayes 0 Nay 0 Absent

Agenda Item #13: Rules Governing Family & Children's Services Docket No. 16-0601-0201 (Pending)

Chuck Halligan, Bureau Chief of Children and Family Services, reported the rules were presented and adopted by the Board in January. The rules contain five dispositional codes for child protection cases: valid, verifiable, indicated, unable to determine and invalid. Having this array of dispositions for child protection reports is a source of confusion for workers, results in challenges to inter-rater reliability, and poses difficulties when reporting state statistics. It is important to have a reliable methodology for disposition since "valid" reports are entered into the State Child Abuse Registry. This registry is critical to the safety of Idaho children as the database for Child Protection background checks. A review of the dispositional schemes of other states and work with the state's child protection supervisor's yielded consensus on two dispositions: Substantiated and Unsubstantiated, with a clear definition of each.

Discussion ensued regarding Section 560.01.a, over the term "witnessed by a worker." The Board questioned if this was open to any worker, and requested Mr. Halligan give further review and consideration of using the term "witnessed by a family services worker," to this section, and to return later in the day for further review by the Board.

Mr. Halligan returned to the Board and stated the language in Section 560 had been modified as requested by the Board. Lengthy discussion ensued regarding the Department's process for placing an individual on the abuse registry, the ability for that individual to appeal and have their name removed, and the availability of registry information. Mr. Halligan responded that the Regional Offices work closely with Central Office staff in providing a thorough review of the child's/family record, and then only after a referral of abuse or neglect is determined to be substantiated, is permission given by the supervisor to place an individual's name on the registry. That individual is then forwarded a letter explaining that they have been placed on the registry and why, and the process for appeal to request a hearing and timelines.

Motion: Marti Calabretta moved the Idaho Board of Health and Welfare hold the Rules Governing Family and Children's Services in the final proposal under Docket No. 16-0601-0201.

Second: Janet Penfold

Discussion on It was noted the Board should be addressing the changes proposed under

The Motion: the docket – the changing of the five dispositional codes for child protection cases to two: substantiated or unsubstantiated, and that the Department be requested to review its process for placing individuals on the abuse registry and make changes if needed and appropriate. The Department should be allowed to manage its internal processes and not be micro managed by the Board.

Roll Call Vote: Motion failed.

Dr. Roberge - No
Mr. Henriksen - No
Mr. Fuchs - No
Mr. Barlow - No
Ms. Calabretta - Yes
Ms. Penfold - Yes
Mr. Kenyon - No

Motion: Dr. Roberge moved that the Idaho Board of Health and Welfare adopt as pending, the Rules Governing Family and Children's Services, as amended, in the final proposal under Docket No. 16-0601-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Robert Barlow

Vote: Motion carried. 6 Ayes 1 Nay (Calabretta) 0 Absent

Agenda Item #14: Rules Governing Family and Children's Services Docket No. 16-0601-0202 (Temporary)

Chuck Halligan, Bureau Chief of Family and Children's Services, reported at its May 14, 2002 meeting, Board members requested to have the term "legal parent" clarified in conjunctions with a previous rule change. Additional clarification is needed to make terms inclusive and to reduce confusion. Transcriptional and grammar changes are being made for consistency. The current practice for the appeal process needs to have the rules consistent with the Rules Governing Contested Case Proceedings and Declaratory Rulings. The rules are also being reviewed for obsolete language, terms that need to be defined, and corrections to references.

Motion: Bert Henriksen moved that the Idaho Board of Health and Welfare adopt as temporary, the Rules Governing Family and Children's Services as presented under Docket No.16-0601-0202, effective July 1, 2002.

Second: Janet Penfold

Vote: Motion carried. 7 Ayes 0 Nay 0 Absent

Agenda Item #15: Rules Governing Child Care Licensing - Docket No. 16-0602-0201 (Pending)

Ed Van Dusen, State Licensing Specialist, Division of Family and Children's Services, reported the proposed revisions to the Child Care Licensing Act to include rules for Children's Therapeutic Outdoor Programs were presented to the Board as temporary in May and now request the rules be adopted as pending with amendments to the temporary. The changes being made clarify the children's therapeutic outdoor program definition, which do not include outdoor programs designed to be educational or recreational, i.e., Girl Scouts, Boy Scouts, etc., and change the water requirements needed based on the child's weight.

Discussion ensued regarding deletion of the section of the rule limiting the parent access to the child. It was determined that parents are involved prior to placement of a child in the program, and in fact bear the responsibility for reviewing and addressing concerns prior to placement, thus it is not necessary to have this addressed by the Board.

Motion: Bert Henriksen moved that the Idaho Board of Health and Welfare adopt, as pending, Rules Governing Child Care Licensing, as amended, in the final proposal under Docket No.16-0602-0201, with the rules becoming final and effective immediately upon the adjournment sine die upon prior review by the 2003 Legislature.

Second: Marti Calabretta

Vote: Motion carried. 7 Ayes 0 Nay 0 Absent

Agenda Item #16: Rules & Minimum Standards Governing Alcohol/Drug – Abuse Prevention and Treatment - Docket No. 16-0603-0201 (Temporary)

Pharis Stanger, Manager, Bureau of Mental Health and Substance Abuse, reported the docket relates to and modifies the rules of minimum standards governing alcohol and drug prevention treatment programs. The primary changes to rules add a section for outpatient drug court treatment facilities. Other minor changes address some changes to qualified professionals and definitions for them. Mr. Stanger reported the 2001 Legislature established drug courts through the Idaho Drug Court Act, and committee representatives include staff from the Idaho Supreme Court, Department of Corrections, Health & Welfare, Juvenile Corrections, Transportation, Idaho State Police, treatment providers, and mental health providers appointed by the Supreme Court. The Committee sets out policy, makes decisions and outlines procedures for the statewide drug court programs, with the intent of creating drug courts in each judicial district.

Representative Loertscher reported he had the opportunity to attend a drug court session and was much impressed by the process, and stated it would be very beneficial for Board members to attend a session. Mr. Stanger will forward to the Board a list of dates for upcoming drug court sessions.

Motion: Dr. Roberge moved that the Idaho Board of Health and Welfare adopt, as temporary, the Rules and Minimum Standards Governing Alcohol/Drug Abuse Prevention and Management, as presented under Docket No.16-0603-0201, effective November 1, 2001, and July 1, 2002.

Second: Janet Penfold

Vote: Motion carried. 7 Ayes 0 Nay 0 Absent

Agenda Item #17: Election of New Board Members (Chair, Vice Chair, Secretary)

The Board discussed member reappointments and the Governor's timeline for nominating new and/or re-appointed Board members. Mr. Barlow expressed his desire to resign from the Board and stated his experience with the Board had been quite rewarding, however, was ready to move on to new ventures. Mr. Barlow was thanked for his support, leadership and many years of service to the Department of Health and Welfare and the Board. It was the consensus of the Board to wait for the Governor's appointments/re-appointments before new officers are elected.

Agenda Item #18 Discussion: Role of the Board

The Board Subcommittee of Quane Kenyon, Janet Penfold and Dr. Roberge met with Director Kurtz, Dave Humphrey and Joyce McRoberts for a brain-storming session, and discussed the strategic plan, long-term direction of the Department, its various programs, and how cutbacks and budget decisions impact programs, employees and clients. It was suggested that the Board, at one of its upcoming meetings, tour the Central Office building and receive an overview of each Division and its programs. The Board will be apprised of key DHW meetings and presentations to the 2003 Legislature.

Agenda Item #19: Tour of State Laboratories

Chairman Kenyon requested the tour of the State Laboratories be rescheduled from 1:00 pm to 11:00 am.

Agenda Item #20: Adjournment:

Motion: Bert Henriksen moved to adjourn the meeting at 11:00 am.

Vote: Motion carried. 7 Ayes 0 Nays 0 Absent

Respectfully signed and submitted by:

Quane Kenyon, Chairman, Health and Welfare Board
Janet F. Penfold, Secretary, Health and Welfare Board
Martha Puett, Executive Assistant and Recorder