Public Policy Committee Meeting Minutes

October 25, 2012
East Conference Room, Joe R. Williams Building
700 W. State Street, Boise, Idaho 83702

Committee Members Present: Dave Dekker, Jenn Halladay, Joe Raiden, Jim Baugh, Jean Christensen

Members Absent: Paul Tierney

Guests: Acena Dekker and Trina Balanoff on behalf of Julie Fodor

Staff: Christine Pisani, Amanda Holloway

Christine called the meeting to order at 8:32.

Welcome Committee Members and Review Agenda
Christine welcomed everyone and announced that we do not have a chair yet. Medicaid Expansion was added to the agenda.

Review and Approve Minutes of Public Policy meeting from April 26, 2012 and July 19, 2012 meetings
Dave Dekker moved to accept the minutes from the April 26, 2012 and July 19, 2012 minutes as written. Jim Baugh seconded. Motion passed.

Elect Committee Chair
Dave Dekker nominated Joe Raiden for chair. Joe was elected committee chair by unanimous consent.

2012 Legislative Issues for Slate Recommendations
Christine explained the three different priority levels, what each level means and how we assign a level to an issue (page 13 of the packet). She also explained that the level the Committee assigned to each legislative issue is what is recommended to the Full Council. Sometimes other legislative issues come up throughout the session that we are not able to anticipate and those things usually get assigned a priority level by a conference call with the public policy committee.

Proposed Legislation for Criminal History and Background Checks for Conservators and Guardianship of Adults with Developmental Disabilities

The Council has been working for the past two years with Representative Burgoyne and other stakeholders to draft legislation that requires guardians and conservators to have a completed criminal history and background check at the time of filing their petition with the courts for guardianship or conservatorship. We still don't know if the most recent draft version will be approved by the FBI. Dawn Peck, with the Idaho State Police said that they still have questions, but she thought she could address them. Jean asked what the FBI's questions were. Christine said we don't know what they are at this time, but last time they were concerned that the bill would violate the petioners rights. Jim explained that the FBI has very strict rules about who can access finger print information. Jim thought our current version addressed those issues. Jenn asked how it was reworded. Jim said now, the fingerprint report goes to the review panel, unless the person themselves enters it into evidence. The evaluation committee can base their recommendation on the report, but cannot tell why. Christine would like to recommend that this effort continue to be a priority one. Jim recommended that we remove the word "developmental" because the law covers people with disabilities. The law changes probate code and the developmental disabilities code. **The Committee assigned this a Priority 1.**

Managed Care

Managed care is a way states are moving in order to pay for health care and long-term services and supports. Idaho's Medicaid system is also moving this direction. Idaho is working on two programs: managed care for people with mental health issues and managed care for people who are dually eligible (eligible for Medicare and Medicaid).

There are currently about 1200 people in Idaho with developmental disabilities that are dually-eligible. The way services are accessed, what services are available, how and who provides services, how quality is measured, and who gets served will all be a part of a new managed care service system. It is a staff recommendation that the Council be at the table because we know the population they are trying to serve. Jean said that they have not received guidance from Centers for Medicaid/Medicare Services (CMS) about self-direction. Jim asked how it would work for people that have individual budgets. Jean said they probably would not get an individual budget. Health & Welfare wouldn't be reviewing individual plans and determining services, it would be the managed care organization (MCO). The MCO would decide how to review and approve plans. Dave asked if that would include how people apply for Medicaid.

Jean said that applying for and determining financial need for Medicaid will probably stay the same. Joe asked if people would get less services with managed care. Jim said probably. Jean said it will change the organization of Health & Welfare. Christine said if the Council is at the table to talk bring us issues we can help inform how the program is designed. Joe asked how it saves money. Jim said that managed care saves money by providing more preventive care and health management; it saves money by avoiding trips to the hospital and to the emergency room. If you do a really good job at taking care of people on the front end, you save money on the back end, by avoiding those higher cost services. Jim said we know that this saves money from a health standpoint, but we don't know how it will save money providing services for people with developmental disabilities. Trina asked what is Health & Welfare doing to ensure the MCO has the expertise to serve the population. Jean said through the Request for Information /Request for Proposal process they are asking those questions. There may have to be some negotiation about what they provide. Jim said in the substance abuse/mental health area, the MCO has developed a partnership with Business Psychology Associates (BPA). AETNA partnered with BPA, who does have expertise with behavioral health, this is how they are saying the can provide this service. Of the 17,000 people in Idaho who are dually eligible, about 1,200 people have developmental disabilities. Christine said that one concerns is what happens to those existing community based providers. Jim said that the ideal is that they become part of that network. Jean said the important thing we need to know is how this is going to be a better product for people with DD and save money. Jim testified that an MCO needs to have DD expertise in order to be eligible for the contract. Health & Welfare said that they wouldn't do that, but maybe that would be part of the Request for Proposals process. Christine said that one thing that is not part of the contract, is that the MCO is not responsible for the cost of psychiatric hospitalization. So, if they are not responsible for that cost, what are they going to do to make sure that doesn't happen, since they are not financially responsible? Jim said that is one way managed care saves money is by providing preventative care to limit the number of psychiatric hospitalizations. Jean said that will have to be a quality measure for the things Health & Welfare can do to make sure that doesn't happen. A perverse incentive is rewarding an entity for doing something you don't want them to do. Jim said you could make more money by recommending someone receive more Developmental Therapy hours than they need. Christine said this is an issue, because this is how the Request for Proposal is written for the behavioral health program. Jean said it depends on how they write the contract. Health & Welfare could write a penalty if people go into the institution. However, it was not part of the Request for Proposals. There

are a lot of unknowns and feel that the Council needs to be at the table to point out the issues that are important to people and their families.

In Idaho managed care is happening in waves. We have the Smiles program for dental and AMR for transportation that are both managed care programs. There is currently a notice out requesting proposals for a managed care entity for mental health and addiction services. The state is moving towards a managed care model for Medicaid services. The deadline for submitting proposals for the mental health managed care proposal is December 5th. Health & Welfare will have to review the proposal and process the contract. Jean said the proposal will include their skills and cost. Dave asked if this means that the state will decide what doctors you can go to. Jim and Jean said that Healthy Connections already decides that. Jim said that we don't know how it will change services and you may not notice any changes. Your doctor might be a provider under this model. You might have more providers or you might have less. The contractor doesn't have to have an agreement with any willing provider, but Health & Welfare does. Joe asked if this replaces traditional Medicaid. Christine said yes. Jim said there are two large contracts. The one that is furthest along is behavioral health services (mental health and addiction services). Jean said that they anticipate awarding the contract by January 2013, and it would start July 2013. This does not impact people with developmental disabilities, but it does impact people with dual diagnosis. Joe asked what a request for proposals is. Jim said it is when Health & Welfare sends out a request to people to tell them how they can manage everyone's care with a certain budget. Arizona is one of the states that has implemented managed care. Their state Developmental Disabilities program is that managed care organization, which makes them different from any other state. Many states have their disability services managed by counties. Each state is different, so you it is hard to compare them. Dave asked if we are talking about individuals for only dual eligible or dual-diagnosis. Jim said right now we are talking about people with dual eligible and behavioral health services. Dave said he is not dually eligible. Christine told Dave right now he is not impacted. Jim said there is a third proposal for a medical home model. This could include everyone. Jean said right now it is just medical. Jim said right now Dave probably receives managed care services – dental, healthy connections and potential medical home. Christine said the reason we are presenting this is because it is coming and it is better to be involved from the beginning. Jean said that the managed care contractor will have to learn to work with the system. **The Committee assigned this a Priority 2.**

Sexual Abuse and Exploitation of Vulnerable Adults

The Fraternal Order of Police is planning to work on section 18-1505 B, Sexual Exploitation of a vulnerable adult. They have made contact with the Council to participate in the development of draft legislation. Christine explained that there was legislation that what was passed last year on the sexual exploitation of children, harsher penalties. Sen. Davis asked why it didn't include vulnerable adults. The FOP said it wasn't on their radar. They recently contacted Christine and asked if we would participate, and she said they would and that Jim would as well. Christine explained that adults are different than children in that, just because that they are adults and can consent to sex, etc. Jim said it is never okay to have sex with a child, so you can't take the same language and apply it to adults, it doesn't work. Christine said that because it is getting such a late start it may not get presented. Trina said that any kind of legislation around sex and adults with developmental disabilities that something gets drafted into law that further impedes their ability to explore their sexuality. Especially concerning people living in assisted living facilities. Christine said that the current language is about a person having child pornography. Jim said it has a lot to do with the person in the videos ability to consent. It is very complicated. The question is how to determine whether or not a person that has any type of cognitive impairment, e.g. a developmental disability or Alzheimer's, has the ability to understand the implications of doing something like this. Jean asked if a functional age or IQ would be an appropriate measurement of consent. The Committee did not feel like either of those was an appropriate way to determine that a person is capable of consent. Jim spoke of a situation because a guy committed adultery with a woman with a developmental disability who was married. The court said she was competent to get married, have sex with her husband, give her consent to have her children removed but not give consent to have sex with this other man. He was in jail for taking advantage of a vulnerable adult, not committing adultery. Jean asked if it has to be a priority 2 in order to make comment. Christine said yes. **The Committee assigned this a Priority 2.**

Revenue and Taxation

Revenue: The Idaho Constitution requires the state to have a balanced budget. This means that the amount the legislature appropriates (approves to spend) for state government cannot be more than the amount that they expect the state will take in money in the form of taxes, fees and other revenue. Over the last few years, the legislature has been very conservative in setting estimates of what they expect the state to make in revenue. This has resulted in budget reductions which, in turn, can mean cuts in services. When the state looks at what actually

has come in as revenue at the end of the state fiscal year (June 30), it is often more than they estimated. This "surplus" is then put back into the state general fund or goes into a state "rainy day" fund that can be saved or used for whatever purpose the state decides. In fiscal year 2012, Medicaid was cut by $35 million in state funds to balance the budget. When the books were closed on that year, there was a surplus. None of that surplus went back into Medicaid. It went to education, tax cuts for Idaho citizens (grocery tax credit) and the rainy day fund.

This is a practice that requires monitoring and input into the legislative process at strategic times. Although it does not deal with advocating for specific services, it can have a great impact on what happens with services.

Taxation: There is legislation being discussed for the 2013 session that will repeal (remove) the personal property tax for businesses. This may not seem to have much to do with disability issues but it could. Personal property taxes are a critical source of funding for local government and for schools. The proposed legislation (we have not yet seen a draft) would remove $129 million from county coffers. In response, the counties would have to dramatically cut services like fire, police, parks and, of course, schools. Or they would have to raise taxes in other ways but there are currently some legal limitations on how much they can increase property taxes. Or they could come to the state and ask for money from the state to replace those funds. If that were to happen, any programs or services that are not mandated by law would be at risk of being cut in order to give the money to the counties. This includes many services to people with disabilities.

This legislation is being promoted by Idaho's big business community (Idaho Association of Commerce and Industry) and has support among legislators who favor reducing taxes and the size of government. The Council has been participating in Partnerships for Idaho's Future, a coalition of education, social service and child welfare advocates, that is gathering information in opposition to this effort. This coalition and its member organizations will be working to educate policymakers about the harmful effects of this property tax cut.

Property tax is collected by counties. If we cut their funds, they could ask the state to make up the funds; those funds might come from cuts to Medicaid or education. Trina asked for an example of personal property tax for business. Jim said this is when they tax the stuff that they own – furniture, computers, and machines. Any physical property that a business owns is taxed by the county. Christine said she is conflicted if it is a three or a two. Marilyn is already meeting with the Coalition for Idaho's Future. **The Committee assigned this a Priority 2.**

Restoring Service Cuts

The Council had advocated for restoring these services to all adults and has had ongoing conversations with the Dental Association to encourage them to do so as well. They intend to pursue this in 2013 within the scope of what JFAC will support.

Also in 2012, the legislature passed language that removed the restriction on people with dual diagnosis being able to get both developmental therapy and psychosocial rehabilitation (PSR) services, depending upon their needs. This restoration was also effective July 1, 2012, but we have heard concerns that it is very difficult for people to get both services. Although Health and Welfare allows people to have both Developmental Therapy and Psychosocial Rehabilitation (PSR), people have to pay for PSR out of their individual DD budgets. Since PSR costs more and many people already have low budgets, this is a problem. These barriers should be removed in order to fully implement the intent of the legislature to restore these services.

Other services for adults have been cut as the result of law changes. Vision, audiology (hearing), and podiatry (foot care) services have been cut. Limitations on the amount or scope of other services have been put into place. It is important that policymakers know the financial and human cost of limiting or eliminating some of these therapies and preventative services and the value to the state of restoring them. **The Committee assigned this a Priority 2.**

Futile Care

The Idaho Medical Association (IMA) has confirmed that they intend to introduce a bill to change the definition of "futile care" in the Idaho code from the one adopted last year, which was in S 1348aa which revised provisions relating to health care providers who are not willing to go along with the desires of patients and those given permission to consent for them and to prevent decisions to deny food, fluids or non-futile, life preserving medical treatment to dying patients without the patient's consent. We do know what changes they are proposing, however they have agreed to share that draft with us when it becomes available. Jim explained that futile care is medical care that does not benefit the person that is receiving the medical care. The problem is that people that have life threatening conditions, doctors will decide that they will not prove care. Last year advocates negotiated with the hospital association and changed the definition of futile care to remove discrimination based on disability, etc. Right now doctors have to follow the wishes of the advance directive or living will. The doctors are concerned that they will have to provide care if it is in the patient's advanced

directive or will, even if it will cause them more harm or prolong their eminent death, when it is "futile." Jean asked if care to make them more comfortable is futile; Jim said it does not. Doctors have to make these decisions all the time. Jim said in his experience doctors don't want to provide care even if there is a chance a patient could live a year or more. **The Committee assigned this a Priority 3.**

Medicaid Expansion

When they passed the affordable care act it expanded the income eligibility for Medicaid by about 100,000 people. Most do not have dd. The Feds will pay 100% of the Medicaid costs for the additional people; the state would have some expenses to provide administrative oversight. It would save the state money, because we are already paying for the additional people through county indigent funds. The estimated savings is $67 million. The federal contribution will gradually decrease so by 2020, the state will pay 10%, the feds will pay 90%. The state can opt in or opt out anytime. The Governor has appointed a committee to look at this. Jim has been to all of these meeting and so far everyone wants to do this. There are a number of legislators and the Idaho Freedom Foundation do not like this because it is an expansion of government. County indignant funds are county money. The counties pay the first $11,000 and then it would come out of the state catastrophic fund. Dave asked who is this going to cover. Jim said it covers anyone whose income is less than 138% of poverty level. The majority of people that would be covered work full time jobs and are without health care coverage through their employer. About 65% of people that have severe and persistent mental illness do not qualify right now, but under this they would. Dave asked if there are self-advocates on the group. Jim said no. Jim said this will have to go before the Joint Finance and Appropriations Committee (JFAC), he thinks it will have to be a statutory change to expand Medicaid eligibility.

Priority 1 Issue

- Proposed Legislation for Guardianship of Adults with Developmental Disabilities

Priority 2 Issues

- Managed Care
- Sexual Abuse and Exploitation of Vulnerable Adults
- Medicaid Expansion
- Revenue and Taxation
- Restoring Service Cuts

Priority 3 Issues

- Futile Care

Other

Anti-bullying legislation

Cherie Buckner-Webb, Sue Chew and Christy Perry all have said they want to present this issue this year, but, to our knowledge, no work has been done to revise last year's legislation or to draft new legislation. Nor have the conversations with the opposing entities happened. Christine doesn't feel like the Council is in a position to create something of quality in this time frame. She is recommending that we support doing something for next year. Trina asked what the Council would be able to do to bring awareness to the issue. Jim said that part of the issue is what action you want the legislature to take. Christine said she wants training in schools, and oversight that this training is happening. Joe asked about last year. Christine said that last year the anti-bullying legislation passed the Senate as amended, but did not get a House hearing. The Council will continue to monitor this.

Jean moved that we support the slate. Jim seconded.

Update on Disability Advocacy Days

The Committee did not have time to discuss Disability Advocacy Days (page 19 of the packet). Christine handed out a flyer with dates, times and locations.

Adjourned

Meeting adjourned at 10:35 am.