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## **SILC MEMBERSHIP FINAL LEGISLATIVE REPORT 2011 LEGISLATIVE SESSION**

### **ADMINISTRATIVE RULES**

Administrative Rules have the force and effect of law and as such are subject to a comprehensive process that includes review and approval by the Idaho Legislature in order to become final and enforceable.

**Docket # 16-0305-1001** - The 2010 Legislature passed House Bill 723, setting the Department's appropriations for State Fiscal Year 2011. The Department needs to reduce general fund expenditures and plans to do so by making the following rule changes:

1. Cap the amount of AABD cash payments for all living arrangements, which include: Room and Board, Semi-Independent Group Residential Facility (SIGRF), Assisted Living or Residential Care Facility (RALF), Certified Family Home (CFH), and Essential Persons who provide services in the participant's own home;
2. Change rules to limit AABD cash only to participants who receive SSI payments;
3. Align benefits for the DD Waiver participants with the A&D Waiver participants living in CFHs and RALFs (Residential Assisted Living Facility).

Action: **Adopted**

SILC Position: **Monitored**

**Docket # 16-0737-1001**- The proposed rule allows the Department to limit and prioritize Children's Mental Health Services, which includes eligibility. This is necessary due to the reductions in appropriations. These changes will give the Department the ability to focus the available resources on those who have the greatest clinical and financial needs. The services will be considered in order of priority needs: crisis, court ordered, and voluntary. A sliding fee scale will be implemented when H&W is court ordered to pay for these services.

Action: **Adopted**

SILC Position: **Monitored**

**Docket# 16-0309-1005**-These changes are being made to implement cost savings as a result of the 2010 HB701 passage. The changes are as follows:

1. Limited contact lens benefits, these benefits apply on when vision cannot be corrected by eyeglasses. Prior authorization requirement for more expensive lenses, and conditions for payment;
2. Restructure the reimbursement of primary care case management;
3. Benefits for evaluation /diagnostic services reduced from 12 hours to 4 per calendar year. Limitations include speech/hearing evaluations, physical therapy evaluations, occupational therapy evaluations and diagnostic services. Psychological/Neuropsychological evaluations are limited separately to 4 hours each'
4. Reduces mental health treatment plan benefits;
5. Eliminates collateral contact for mental health services, dd services, and school-based services.

Action: **Adopted**

SILC Position: **Monitored**

**Docket # 16-0310-0902-Reduction in Medicaid DD Benefits**-These rules result from the Governor's holdback and have been extended into 2010 through legislative action. Continues the reduction of developmental therapy benefits from 30 hours to 22 hours per week.

Action: **Adopted**

SILC Position: **Opposed**

**Docket# 16-0310-1002-Children with Developmental Disabilities Medicaid Services Re-Design**-These rules replace developmental therapy and Intensive Behavioral Intervention and provide 3 alternative options based on a child's need.

1. Children's HCBS State Plan for children birth to 17 with a developmental disability. Includes respite, habilitative support with no skills training, and a family education component.
2. Children's DD Waiver for children who meet the institutional level of care. Includes services in the state plan plus

habilitative intervention, crisis intervention, family training, therapeutic consultation, and interdisciplinary training.

3. Act Early Waiver for children with developmental disabilities aged 3-6 with challenging behaviors and/or autism, intensive and time limited; requires active parental participation for no less than 20% of the time child is receiving services.

There are two options that families can choose to direct their child's services. The child is assigned a budget level associated with one of the three options. These budgets are less than what they currently receive with the exception of the Act Early Waiver.

Action: **Adopted**-Angela Lindig and Katherine Hansen worked With Health & Welfare Committee Chair to remove one section that had required that habilitative supports be delivered only in community settings. (HCR 012 rejects this portion of the rule)

SILC Position: **Opposed originally, supported slightly with the change but still opposed in concept.**

**Docket # 16-0310-1003**-These rules implement the intent of HB701 and HB708 from the 2010 Legislative Session which reduce general funds by:

1. Clarification of nursing facility coverage and limitations;
2. Nursing facility inflation freeze;
3. Nursing facility efficiency incentive;
4. Nursing facility special rate payment offset clarification; and
5. Incentive changes for ICF/ID.
6. Requires an 85% cost survey compliance rate for PCS Agency providers.

The rules reduce state general fund costs by \$193,000 (\$965,000 in state and federal fund total) for HB701. Reduce state general fund costs by \$1.09 million (\$5.4 million in state and federal fund total) for HB708.

Action: Adopted

SILC Position: **Opposed because originally opposed both HB701 and HB708 in 2010.**

**Docket #13-0310-1005**-These rules are in response to HCR 48 from the in the 2006 Legislature, and are focused on continuing Mental Health program revisions that will help clarify program elements and establish supervision and minimum professional requirements. Based on stakeholder input, provider qualifications are being revised.

1. Incorporated newly defined supervision requirements;
2. Include clarification of PSR specialist “continuing” education requirements; and
3. Revise PSR specialist education requirements.

Action: Adopted

SILC Position: Monitored

**Docket# 16-0310-1006**-Reduction in DD and Mental Health Medicaid Benefits-These rules are a result of HB701 that was passed during the 2010 Legislative Session. The reductions include:

1. Elimination of collateral contact benefits;
2. Elimination of supportive counseling benefits;
3. Reduction from a limitation of 12 hours annually, to 4 hours annually. Provider requirements are modified. Mental Health intake and Mental Health functional assessment requirements eliminated, separate limitations for psychological and neuropsychological testing are established at 4 hours annually;
4. Reduction in plan development benefits from 12 hours to 6 hours and reduce requirements related to adult DD plan development;
5. Increase DD program efficiency, reduce duplication of required administrative and procedural requirements;
6. Restricts use of certain mental health benefits with certain DD benefits. Skill training participants must choose to obtain the services from either the MH program or the DD program.
7. Eliminates service coordination for individuals eligible for PAS;
8. Reduces MH PSR Service benefits;
9. Restricts MH partial care to individuals who have a diagnosis of serious/persistent mental illness;
- 10.Reduces benefit for MH PSR treatment plan benefits;
- 11.Eliminates home health skilled nursing services for A&D Waiver participants.

Action: Adopted

SILC Position: **Opposed**

**Docket# 16-0313-1002**-These proposed rules for the redesign of children’s developmental disabilities benefits include a Family-Directed Services (FDS) option as part of Home and Community

Based Services (HCBS waivers for children and a related State Plan option. This option is very similar to the Consumer-Directed (CD) option available under the Adult DD Waiver program. Changes are being made to this chapter to incorporate the new FDS option and update the definition section.

Action: Adopted

SILC Position: Monitored

**Docket# 16-0319-1001-Certified Family Homes**-Amends rules governing guardianship of residents by the certified family home provider. Also updates safety and sanitation requirements. Defines that a certified family home provider may not be the guardian of any resident unless the guardian is a parent, child, sibling, or grandparent of the resident.

Action: Adopted

SILC Position: Monitored

**Docket# 16-0324-1001**-Under Title 31, Chapter 35, Idaho Code, the Department has the responsibility to develop and implement rules for a Medicaid eligibility determination process for applicants applying for financial assistance through the County Medically Indigent Program and Catastrophic Health Care Cost Program. This new chapter of rules provides the requirements necessary for a hospital or county to submit applications and requests to the Department to determine Medicaid eligibility for an applicant who may be medically indigent.

Action: Adopted

SILC Position: Monitored

**Docket# 16-0411-1001**-The Department is proposing to rewrite this chapter of rules as part of the Children's System Redesign project. This project will restructure benefits for children with developmental disabilities under two Home and Community Based Services (HCBS) waivers (similar to that for adults) and a related State Plan option, and will eliminate current State Plan DDA services. **This is a repeal of the current rules and rewritten in Docket#16-0321-1001.**

Action: Adopted

SILC Position: Monitored

**Docket# 16-0506-1001- Criminal history and background check** (CHC) rules provide a list of individuals and providers required to have a CHC. The CHC rules reference other Department rules and statutes requiring certain individuals to meet the CHC requirements. Currently, some of the individuals and providers listed in this chapter are not consistent with the Department rules that require the background check. In order to clarify the distinction between the Department's program rules and the Department's CHC rules, these CHC rules are being amended to reference only those Department rules that require an individual to have a criminal history and background check. The Department's list of disqualifying crimes, and unconditional denials that prevent a person from receiving a CHC clearance is being updated. The Department is changing these rules to state that an individual listed on the Nurse Aide and Child Protection Central registries will receive unconditional denials. The 5-year disqualifying crimes list is amended to encompass additional crimes to better protect children and vulnerable adults.

Action: Adopted

SILC Position: Monitored

**Docket# 16-0601-1001-Child and Family Services**-These rules bring into compliance the Department's Title IV-E State Plan.

1. Addresses the relative guardianship assistance in order to provide for a permanent living situation with a relative for older children and; further requirements of the Multiethnic Placement Act (MEPA).
2. The eligibility for Title IV-E, adoption assistance will greatly expand the number of adopted children eligible, within the next eight years, which could expand the number of children eligible for adoption assistance subsidies. This clarifies who is eligible so that the children who are in most need will continue to be able to receive assistance.
3. Bring rules into alignment by clarifying: 1) rules regarding contact requirements for foster children in out-of-state care 2) risk-oriented language in rule is being replaced with safety-oriented language, and 3) it removes the requirement for parent signature on the alternate plan.
4. Establishes an actual dollar amount that establishes the maximum assistance for children in foster care who are eligible for PCS.

Action: Adopted  
SILC Position: Monitored

**Docket# 16-07371001-Children's Mental Health Services**-The proposed rule changes will allow the Department to limit and prioritize Children's Mental Health Services, including eligibility. This is necessary due to the reductions in appropriations. These changes will give the Department the ability to focus the available resources on those who have the greatest clinical and financial needs. In addition, these rule changes will more closely align the Children's Mental Health Services rules with the corresponding rules in IDAPA 16.07.33, "Adult Mental Health Services."

Action: Adopted  
SILC Position: Monitored

**FULL BILL TEXT, STATEMENT OF PURPOSE AND ACTION TAKEN GO TO:**  
<http://www.legislature.idaho.gov/legislation/2011/legIndex.htm>

## **SENATE LEGISLATION**

**SB1020- This bill contains IRS compliance amendments-** Section 3 of the bill implements changes required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). USERRA requires that an employer provide employment rights to persons on U.S. military service leave equal (or better) to employees on leave for other reasons.

a. Under USERRA, an employee away on U.S. military service leave cannot be treated worse than an employee away on other leave. As currently drafted, the definition of disability is discriminatory against members active in the U.S. armed forces because it prohibits such persons from being eligible for disability retirement. The change to the definition of disability will provide that a member who incurs a disability resulting from service in the United States armed forces is eligible for disability retirement. The change to the definition of military service makes the definition of military service consistent with the changed definition of disabled by recognizing that a member in active service could become a disability retiree. The changes in Section 3 will be effective July 1, 2011.

Action: Passed Senate 2/10, Passed House 3/14, Signed by Governor on 3/22, Session Law Chapter 100  
SILC Position: Supported

**SB1022 - Archaic Disability Language-** This bill makes a terminology correction to SB1310 that passed during the 2010 Legislative Session. Makes Section 39-5606 consistent with S1330 by replacing "mentally retarded" with "people with intellectual disabilities," and changes the acronym for immediate care facilities for such persons from "ICF/MR" to "ICF/ID."

Action: Passed Senate 3/01, Passed House 3/23  
Signed by Governor 03/29, Session Law Chapter 148  
SILC Position: Supported

**SB1032 – Foster Care** - This legislation would create procedures by which a foster child's status as a foster child could be extended up to the date of the foster child's twentieth birthday in order to reduce adolescent homelessness, unplanned pregnancies, unemployment, substance abuse, and social service dependency in the group of children who "age out" of foster care at age eighteen (18).

Action: Currently in Senate Health & Welfare  
SILC Position: Monitoring

**SB1044a** - This bill makes clear that the personal representative of a decedent can control the social media of the decedent, such as e-mail, blogs, instant messaging, Facebook types of accounts, and so forth. Section Two gives the same power to a conservator for a protected person. This is an emerging area of law that has no clear coverage in the Idaho Probate Code.

Action: Passed Senate 2/18, Passed House 3/04  
Signed by Governor 03/16, Session Law Chapter 69  
SILC Position: Monitored

**SB1070a- Assisted Suicide** - Adds to existing law relating to homicide to provide for a felony, punishable by 5 years incarceration, relating to the causing of or assisting in a suicide, to provide penalties, to provide for the revocation of a certain license or certification, to provide injunctive relief, to provide exceptions and to define terms.

Action: Passed Senate 03/11 Passed House 03/28  
SILC Position: Monitoring

**SB1076 – ADRC Added to State Statute** -The Idaho Commission on Aging proposes state statutory language changes in an effort to align Idaho statutes with those outlined in the Older Americans Act and reflect national federal systems change initiatives for Aging and Disability Resource Centers (ADRC). These person-centered systems are envisioned to: optimize choice and independence; be served by an adequate workforce; be transparent; encourage personal responsibility; provide coordinated, high quality care; be financially sustainable; and utilize health information technology. ADRCs have a critical role in supporting this long-term reform by improving the ability of state and local governments to effectively manage the system, monitor program quality and measure responsiveness of state and local systems of care.

Action: Passed Senate 3/03, Passed House 03/23  
Signed by Governor 0/29 Session Law Chapter 142  
SILC Position: Monitoring

**SB1081- Idaho State School and Hospital** - Adds to existing law relating to Idaho State School and Hospital to provide legislative intent; to provide for prohibitions, restrictions and limitations on admissions; to provide for discharge planning and authorization to discharge; to provide for notice of discharge and request for hearing; to provide for appeals; and to provide for rulemaking authority. This legislation is part of the transition plan that includes 3 phases to transition residents into the community.

Action: Passed Senate 2/28, Passed House 3/14  
Signed by Governor 3/22 Session Law Chapter 101  
SILC Position: Supported

**SB1082 – Idaho State School and Hospital** - Changes the name of the Idaho State School and Hospital to the Southwest Idaho Treatment Center.

Action: Passed Senate 2/28, Passed House 3/14,  
Signed by Governor 3/18 Session Law Chapter 102  
SILC Position: Supported

**SB1084 – Adoption** - Eliminates the ability of individuals to provide adoption services without licensure, liability insurance, and the oversight of an adoption agency. Several years ago the state needed individuals to perform these functions but licensed agencies are now able to deliver these services throughout the state. Current statute provides little ability to regulate these services for the Department and adequate oversight would create an increasing workload for decreased staff. Current adoption services provided by these individuals are of inconsistent quality, and have generated concerns from individual citizens, private adoption agencies, and the courts.

Action: Currently in Senate Health and Welfare  
SILC Position: Monitoring

**SB1104 – Behavioral Health** - This legislation establishes in Idaho statute the Office of Behavioral Health Transformation as one of the preliminary actions recommended by the Governor's Behavioral Health Transformation Work Group in their final report, The legislation also repeals the Interagency Committee on Substance Abuse Prevention and Treatment, that was due to sunset on July 1, 2011, and assigns similar duties to the newly created Cooperative. Also, the legislation replaces the "Office of Drug Policy," that is an additional transformation recommendation, with the Office of Behavioral Health Transformation and creates the administrator position of that office. All of these actions are included in the recommendations of the Governor's Behavioral Health Transformation Work Group that was established by Executive Orders 2009-04 and 2010-01 and was tasked to create a plan for a "coordinated, efficient state behavioral health infrastructure with clear responsibilities, leadership authority and action" for the State of Idaho.

Action: Currently in Senate House and Welfare  
SILC Position: Monitoring

**SB1105a – Student Harassment** – Amends and adds to existing law relating to harassment, intimidation or bullying of a student to provide what is included within the term "harassment, intimidation or bullying," to revise who may be found guilty of the offense, to replace discretionary language with mandatory language, to provide a misdemeanor penalty for a third offense and to provide requirements

for harassment, intimidation and bullying information and professional development.

Action: Passed Senate 03/08, House  
SILC Position: Monitoring

## **HOUSE LEGISLATION**

**HB029 – Taxation** – This legislation eliminates certain exemptions for the Sales Tax, and reduces the Sales Tax rate from 6% to 5%. There are ten exemptions eliminated; broadcast equipment, commercial aircraft, railroad rolling stock and remanufacturing, drivers education automobiles, trade in value, ski lifts and snow grooming equipment, heating materials, utility sales, precious metal bullion, and telecommunications equipment. It also added nine new categories of Services to the Sales Tax; Professional, Personal, Business Construction, transportation, repairs, lottery and pari-mutual betting, media measurement, and miscellaneous. The legislation maintains the exemption for medical services and extends sales tax to motor vehicle purchases by related parties, sales through vending machines, and sales by outfitter and guides.

Action: Currently in House Revenue and Taxation  
SILC Position: Supported the concept because it raised revenue, approximately \$371 million, which might have assisted with the cuts in Medicaid in Education.

**HB049 – Assisted Living Facility Administrators** – This legislation amends the qualifications for a license to require a combination of education and documented experience in a residential care facility.

Action: Passed House 2/23, Passed Senate 3/8, Signed by Governor on 3/17, Session Law Chapter 92  
SILC Position: Monitored

**HB164 – Community Care Advisory Council** - This legislation is to reduce the number of members on the Community Care Advisory Council from 22 down to 20 and to allow the makeup of the Community Care Advisory Council to be determined by the by-laws of the Community Care Advisory Council. It also allows for alternative meeting formats, such as conference calls and video conferencing. The Idaho Council on Developmental Disabilities and Disability Rights Idaho serve on this council.

Action: Passed House on 2/25, Passed Senate on 3/15  
Signed by Governor 3/22, Session Law Chapter 123  
SILC Position: Monitored

**HB169 – Public Contracting with Organizations Providing Employment Services to Persons with Disabilities** - This legislation intends to give nonprofit organizations representing or employing persons with disabilities the opportunity to bid for public contracts for services or to provide goods which have been produced by these entities. Similar to the current opportunity for Idaho-based bidders, this bill will encourage public contracting to partner with such organizations to enhance the economy in Idaho.

Action: This legislation was pulled by the Sponsor.  
SILC Position: **Opposed** - After conversations with the DD Council this legislation would have made it the responsibility of The DD Council to provide a list of segregated employment providers. This is in conflict with the Council's statutory obligations.

**HB187 - Freedom of Conscience for Health Care Professionals Act (IC 18-611) and the Medical Consent and Natural Death Act (IC 39-4513)**. This legislation amends existing law to require a physician, who may have a conscience objection regarding treatment of a patient, to comply with the patient's living will or the Physician's Order for Scope of Treatment (POST) before withdrawing treatment.

Action: Passed House on 3/7, Passed Senate 03/29  
Signed by Governor on 04/06 Session Law Chapter 225  
SILC Position: Monitoring

**HB207a – Idaho Building Code** - This legislation deals with the issuance of building permits for improvements, extensions, or alterations of existing buildings, residences or other structures. The purpose is to grandfather unaffected parts of existing structures from having to meet more stringent building code requirements than were in existence at the time of the original construction.

Action: Passed House as amended 3/21, Passed Senate  
Signed by Governor 04/05 Session Law Chapter 228  
SILC Position: **Originally Opposed**, amended in House to provide that accessibility compliance is still in place.

**HB221 – Medicaid** – This legislation made substantial cuts in Medicaid services to people with disabilities. It removed all DD Services for adults on the state plan only; required individuals on DD Waiver to transfer to the A&D Waiver with a mandatory retirement of 45 years of age; required an approval from a psychiatrist for any PSR services, reduced PSR for adults to 4 hours a week; eliminates all adult preventative dental services; eliminates audiology services for adults; adds in to statute the required eliminations and cuts in services from HB701 and HB708 from the 2010 Legislative Session; implements a budget tier system for adults; proposes changes in Medicaid to move it to a managed care system. Estimated cuts proposed totaled \$39 million in state general funds only, did not take into account the loss of federal match.

Action: Replaced with **HB260** after it was Held in House Health and Welfare

SILC Position: **Opposed**

**HB260 – Medicaid** – Replacement legislation of HB221. This replacement eliminated the requirement that adults with developmental disabilities on the DD Waiver transition to the A&D Waiver and the 45 mandatory retirement, removed language that prohibited individuals with developmental disabilities on the state plan from receiving developmental therapy; eliminated the requirement for a psychiatrist approval for PSR and instructed the department to develop a management tool for PSR. All of the “short term” cuts that were in HB701 from the 2010 Legislative Session remain as long term cuts. This still contains language requiring implementation of a budget tiered system for adults on the DD waiver. This legislation adds approximately \$4.4 million back into Medicaid but still \$35 million cuts in services.

Action: Passed House on 3/17, Passed Senate 03/28

Signed by Governor 04/05 Session Law Chapter 164

SILC Position: Monitoring: Supported adding services back in, Oppose Cuts to Medicaid

**HB262 – Public Assistance** – Gives additional authority to the Idaho Department of Health and Welfare to verify and account for the number of dependent children being claimed on applications for the

federal food stamp program by requesting additional documentation It seeks to determine that the number of dependent children being claimed is the actual number of children which exist.

Action: Passed House 3/22 Passed Senate 04/01  
Signed by Governor 04/08, Session Law Chapter 269  
SILC Position: Monitoring

**HB330** – **State Independent Living Council Appropriation** – This appropriates \$748,000 for FY 2012 to the SILC and authorizes additional spending authority of \$86,400 for FY 2011. It also gives the SILC lump sum spending authority. Includes a \$5700 state general fund reduction, 6% for FY 2012.

Action: Passed House 03/31, Passed Senate 04/05  
Signed by Governor 04/11, Session Law Chapter 294  
SILC Position: Support

**HB341** – **Department of Health & Welfare Appropriation** – This is the omnibus appropriation for Health & Welfare, it includes all programs. Reduces the appropriation by \$35.89 million for SFY2011. Includes SFY2012 Appropriation for the Idaho Council on Developmental Disabilities in the amount of \$629,500 of which \$97,200 is State General Funds. There are several sections of intent language, included language for HB260 Medicaid Cuts. There is language requiring the Department to provide monthly reports concerning forecasts of Medicaid, file quarterly reports on the collections of the Medicaid Integrity Section, and quarterly reports to the Legislature on implementation of the provisions of HB260. This also directs the Department to complete an actuarial analysis for Medicaid Managed Care and to submit a report by 12/1/2011.

Action: Passed the House on 04/04, passed the Senate on 04/06.  
Signed by the Governor on 04/11, Session Law Chapter 298  
Effective: 04/11/11 Sections 1,2 & 3  
All other Sections effective 07/01/11

## HOUSE CONCURRENT RESOLUTIONS

**HCR9 – Privatization of Idaho State School and Hospital** – This legislation directs the Department of Health and Welfare to develop a plan to privatize ISSH. The plan should include the sale or use of state owned land and buildings that would best benefit the state of Idaho. This requires that the department present the plan in the 2012 Legislative Session.

Action: Passed House on 2/28, Currently in Senate Health and Welfare

SILC Position: **Opposed** but Monitoring-The SILC has historically supported the closure of ISSH and the transition of individuals residing at ISSH into the community. SILC understands that there are some residents that will not have the necessary community supports to safely reside in the community. ISSH can still provide a “safety net” for addressing short term crisis intervention.

**HCR12 – Rule Rejection** – This resolution rejects a section of the Children’s Redesign Rules and will allow Habilitative Supports to be Provided in settings other than the community.

Action: Adopted by House on 2/24, Adopted by Senate 3/04  
Delivered to the Secretary of State on 3/10

SILC Position: Supported

**HCR27 – IDVR/ICBVI Task Force** – This resolution creates a task force to study the recommendation of combining IDVR and ICBVI. The task force will study what other states have done with similar services. The task force will look at cost savings, costs associated with delivering services to clients of both agencies.

Action: Held in House Commerce & Resources 03/29

SILC Position: Monitored-Asked to be included on task force if resolution passed.

