

COMMUNITY CARE ADVISORY COUNCIL

January 28, 2014

Present:

- Robert Vande Merwe (IHCA-ICAL Executive Director), Chair
- Scott Burpee (RALF At-large Administrator), Vice Chair
- Tamara Prisock (IDHW Director Designee)
- Keith Fletcher (RALF At-large Administrator)
- Angela Eandi (DisAbility Rights Idaho)
- Kathie Garrett (Mental Health Advocate)
- Gloria Keathley (RALF Resident Representative)
- Eva Blecha (CFH Provider Representative)
- Leroy Smith (CFH Resident/Family Member Representative)
- Christine Pisani (Developmental Disabilities Council)
- Pamela Estes (CFH Provider Representative)

Teleconference:

- Mary Blacker (CFH Provider Representative)
- Brett Waters (RALF IHCA-ICAL Administrator)

Absent:

- Elishia Smith (RALF Resident/Family Member Representative)
- Cathy Hart (Idaho Ombudsman for the Elderly)
- Cathy McDougall (AARP)
- Sharol Aranda (CFH Provider Representative)
- Bryan Elliott (RALF IHCA-ICAL Administrator)
- John Chambers (CFH Resident Representative)

Support:

- Steve Millward

Guests:

- Kris Ellis, IHCA-ICAL
- Karen Vasterling, IDHW
- Trista Wolfe, RALF
- Marilyn Sword, Consultant
- Wanda Warden, CFH
- Ken Warden, CFH
- Peg Dougherty, IDHW

The council convened at 1:00 p.m. in Conference Room D-East and D-West of the Medicaid/Licensing & Certification Central Office located at 3232 Elder Street in Boise, Idaho. Scott Burpee, Vice Chair, conducted the meeting.

Motion: Adopt the minutes from the October 29, 2013, meeting as written.

So Moved: Tamara Prisock

Seconded: Gloria Keathley

Discussion: None

Vote: Passed

Open Meeting Law

Peg Dougherty, the Department's Deputy Attorney General, gave a presentation to the Council regarding open meeting law (see Attachment 1). The members of the council were cautioned that any correspondence that may be considered deliberations concerning Council business were subject to the open meeting law. Meeting schedules, including subcommittee meetings, must be posted 5 days in advance of the meeting, and the meeting agenda must be posted 48 hours in advance of the meeting. Any amendments to the posted agenda must be voted on during the meeting, and include justification for why the item was not included previously. If the order of items and timeframes noted on the agenda will not be strictly adhered to, the agenda must include a disclaimer stating that times are estimates and the order is subject to change. Peg also described the penalties associated with violating open meeting law, and how the Council may cure known violations.

Managed Care Model with Blue Cross

Marilyn Sword, who is consulting with Blue Cross of Idaho, gave a presentation regarding a plan for dual eligible participants (see Attachment 2). Questions can be emailed to Marilyn at marilyn.sword@mycpid.com.

Scott Burpee suggested that the Council have a representative from Blue Cross at the next meeting. Tamara Prisock voiced her concern that this is not the right forum to address reimbursement issues. Keith Fletcher asked why Medicaid has not given this information to providers; Scott responded that Medicaid does hold conference calls concerning dual eligible, but he stopped participating in them because suggestions were never accepted.

Membership

A current roster was provided to the Council (see Attachment 3). The only vacancy is a RALF Administrator or Licensee appointed by IHCA-ICAL. Robert Vander Merwe indicated that IHCA-ICAL is in process of making that appointment. Trista Wolfe expressed interest in serving on the Council; she operates four assisted living facilities.

RALF Legislation

Scott Burpee outlined proposed legislation that he and Keith Fletcher intend to introduce (see Attachment 4). DRMPN157 would change the definition of assessment and the law regarding how the assessment is developed and utilized. DRMPN155 would incorporate Idaho Code 56-255 into the list of department clients to be assessed as described in Idaho Code 39-3303, and establish minimum staffing ratios and payment levels.

Shared Administrators in Assisted Living Facilities

Tamara Prisock outlined the Department's current policy for granting a waiver to allow multiple facilities to share a single administrator. She also updated the Council on the results of a survey asking stakeholders for input on what that policy should be. A handout was provided (Attachment 5) outlining a subcommittee proposal, posing questions for discussion, and providing a timeline for implementation. Tamara expressed doubt that the Department could make changes prior to the end of this legislative session, and wasn't sure she could support Scott Burpee's legislation as written in Attachment 4, DRMPN156. Christine Pisani expressed concern about the number of core issues allowed in the proposed legislation, and

about the distances between facilities of a shared administrator. Scott Burpee outlined the greater impact to small facilities losing a shared administrator versus larger facilities losing a shared administrator, being that smaller facilities do not have the profit margins to absorb that kind of loss.

Robert Vande Merwe suggested that the first bullet on Attachment 5 be worded as follows: *“Leave shared administrator decision as a variance to the existing requirement until rules can be written and statute changed.”* Also, the second bullet be worded as follows: *“Require the plan of operation to include the establishment of a house manager in each facility sharing an administrator. House Manager must complete Administrator Bootcamp and the Department’s six on-line courses, and other training as required.”* Finally, the third bullet be worded as follows: *“Revocation of the variance would occur if the facility is found to have 2 repeat core issues in 2 regular surveys or complaint investigations in a row.”*

- Motion:** Recommend that the Department adopt the proposed shared administrator policy with the suggested changes as noted in the preceding paragraph.
- So Moved:** Robert Vande Merwe
- Seconded:** Pam Estes
- Discussion:** Eva Blecha questioned whether the proposed policy met open meeting law, as it was developed by a subcommittee. Tamara Prisock explained that everything that had been discussed by the subcommittee was again fully discussed by the full council in the meeting today, and therefore did not require curing. There was discussion about the meaning of the phrase “in a row” when one survey is for relicensing and another is for the investigation of a complaint.
- Vote:** Passed

Criminal History Background Checks for New Employees

Scott Burpee outlined proposed legislation that he and Keith Fletcher intend to introduce (see Attachment 4). DRMPN154 would allow an the facility to use an interim criminal history and background check to supplement the DHW Criminal History Unit process until the Department’s process could be completed for new hires. Tamara Prisock distributed draft rules for such a statute change (see Attachment 6). There needs to be further rule development that sets criteria for acceptable interim background checks.

- Motion:** Support the proposed rules to supplement the Department’s Criminal History and Background Check process pending legislation.
- So Moved:** Robert Vande Merwe
- Seconded:** Gloria Keathley
- Discussion:** Eva Blecha asked for more clarification on what rules were being approved, and what requirements surrounded workers who move from one facility to another. Scott Burpee provided clarification.
- Vote:** Passed

CFH and RALF Rule Comparison Clarification

Tamara Prisock provided a side-by-side comparison of CFH and RALF rules pertaining to state-funded clients (see Attachment 7). Keith Fletcher clarified that his concern was more comprehensive than the rules identified in the hand-out. His concern is that rules are more stringent in the RALF environment compared to the CFH environment, yet they both can care for clients with identical care needs. Angela Eandi suggested members bring forward the specific issues that they are concerned about. Scott Burpee stated that this issue may warrant a subcommittee to explore, and in interest of time, he is tabling the issue until next meeting.

Annual Report to the Legislature

Steve Millward presented a draft of the Council's annual report to the legislature (see Attachment 8).

Motion: Approve the annual report as presented.
So Moved: Robert Vande Merwe
Seconded: Pam Estes
Discussion: None
Vote: Passed

Election of Officers

Leroy Smith nominated Scott Burpee to chair the Council. Leroy also nominated Eva Blecha as vice chair.

Election: Elect Scott Burpee as chair of the Community Care Advisory Council, and Eva Blecha as vice chair of the Community Care Advisory Council.
Vote: Passed

Small RALF Policy

Scott Burpee stated he wished to wait until after the legislative session to address this issue. The item is tabled until next meeting.

2013 CFH Report

Karen Vasterling presented the CFH Report for SFY 2013 (see Attachment 9). There was discussion regarding program coordination with Community Partnerships of Idaho and reporting. Scott Burpee asked why there was a steady increase in the number of complaint surveys. Karen attributed it to better data collection by the Department. Scott inquired regarding the status of residents of homes that had their certificates revoked due to non-payment; Karen answered that in none of these cases were the residents placed elsewhere.

Motion: Adjourn
So Moved: Leroy Smith
Seconded: Eva Blecha
Discussion: None
Vote: Passed

Attachment 1

**Office of the
Attorney General**

**Idaho
Open Meeting Law
Manual**

Idaho Code §§ 67-2340 through 67-2347



NOVEMBER 2011

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State of Idaho Office of Attorney General Lawrence Wasden

INTRODUCTION

Open and honest government is fundamental to a free society. The Idaho Legislature formalized our state's commitment to open government by enacting the Idaho Open Meeting Law in 1974. The Open Meeting Law codifies a simple, but fundamental, Idaho value: The public's business ought to be done in public.

One of my duties as Attorney General is to ensure that state agencies and officials comply with the Idaho Open Meeting Law. The 44 elected county prosecuting attorneys have the same duty with regard to agencies and officials of local government.

My Office is committed to assisting Idaho's state and local officials in complying with their obligation under this law. Toward that end, my Office regularly conducts training sessions for state and local officials throughout Idaho.

My Office has prepared this updated manual for your use and reference. This manual's purpose is to inform government agencies of their obligations, and citizens of their rights, under Idaho's Open Meeting Law.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

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**POLICY CONSIDERATIONS UNDERLYING THE OPEN
MEETING LAW**

The Idaho Open Meeting Law¹ was designed to ensure transparency of the legislative and administrative processes within state and local governments. The Legislature articulated this policy in the Act's first section:

The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.²

Open meetings offer the public a chance to observe the way their government operates and to influence their government in positive and important ways. Closed meetings often can lead to distrust of governmental decisions and acts.

Those who conduct meetings must remember this policy above all when deciding whether a meeting should be open. If a meeting is closed, there must be a compelling reason, supported by the statute itself, or by subsequent court rulings.

Remember, when in doubt, open the meeting.

¹ Idaho Code §§ 67-2340 to 67-2347 (2011).

² *Id.* at § 67-2340.

QUESTIONS AND ANSWERS

PUBLIC BODIES OR AGENCIES COVERED BY THE OPEN MEETING LAW

Question No. 1: What public bodies or agencies are subject to the Open Meeting Law?

Answer: The Open Meeting Law provides: “All meetings of a *governing body* of a *public agency* shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. . . .”³ “Governing body” is defined to mean the members of any public agency “with the authority to make decisions for or recommendations to a public agency regarding any matter.”⁴ “Public agency” is defined to encompass various categories of governmental entities and subdivisions at all levels of government.⁵ The governing bodies of public agencies that are created by or pursuant to statute, as well as public agencies that are created by the Idaho Constitution, are subject to the Open Meeting Law.⁶ The only public agencies that are statutorily exempt from the Open Meeting Law are the courts and their agencies and divisions, the judicial council and the district magistrates commission.⁷ Deliberations of the Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission, in a fully submitted contested case proceeding, are also exempted from the requirement that they take place in open public meeting.⁸

Question No. 2: Does the Open Meeting Law apply to a public agency headed by a single individual as contrasted with a multi-member body?

Answer: No. Section 67-2341(5) defines a governing body to mean “the members of any public agency *which consists of two (2) or more members*, with the authority to make decisions for or recommendations to a public agency regarding any matter.” (Emphasis added.) By definition, the Open Meeting Law applies only to a governing body which consists of two or more members

³ Idaho Code § 67-2342(1) (emphasis added).

⁴ Idaho Code § 67-2341(5).

⁵ Idaho Code § 67-2341(4).

⁶ Attorney General Opinion No. 77-30

⁷ Idaho Code § 67-2341(4)(a).

⁸ Idaho Code § 67-2342.

and thus does not apply to a public agency headed by a single individual.

This also extends to *employees* of a public agency headed by a single individual; meetings held by employees of a department headed by a single individual (or multiple parties, for that matter) do not have to be open to the public. An illustrative example of this principle arose in the 2008 case of *Safe Air For Everyone v. Idaho State Dep't of Agriculture*.⁹ There, the Idaho State Department of Agriculture (ISDA) invited representatives from federal, state, and tribal agencies to a meeting to discuss issues surrounding crop residue burning. The meeting was closed to the public. Several employees of the ISDA attended the meeting, but the director did not.

An environmental group sued the ISDA, arguing that the employees' participation in the meeting constituted a violation of the Open Meeting Law because the director had delegated decision-making authority to the employees, thus making the employees a "governing body." The Supreme Court disagreed, stating that

[b]y definition, a 'governing body' [under the Act] must have 'the authority to make decisions for or recommendations to a public agency regarding any matter.' The employees do not have 'the authority' to make decisions for or recommendations to the ISDA. Any decision they make can be countermanded by a supervisor, and their supervisor can likewise deny them permission to make recommendations. . . . [T]he authority to make decisions for the agency or recommendations to the agency must be statutorily based.¹⁰

Of course, it should be noted that under the Idaho Administrative Procedure Act (A.P.A.) various state agencies must hold open public meetings when they adopt rules or when they determine certain contested cases.¹¹ The open public meeting requirements of the A.P.A. apply regardless of whether the public agency is headed by a single individual or by a multi-member body.

⁹ 145 Idaho 164, 177 P.3d 378 (2008).

¹⁰ *Id.* at 168, 177 P.3d at 382.

¹¹ Idaho Code § 67-5201 to 67-5292.

Question No. 3: When is a subagency of a public agency subject to the Open Meeting Law?

Answer: A subagency of a public agency is subject to the Open Meeting Law if the subagency itself “is created by or pursuant to statute, ordinance or other legislative act.”¹² In *Cathcart v. Anderson*, the Washington Supreme Court interpreted a Washington statute similar to section 67-2341(4)(d). The court held that, under the language “created by or pursuant to,” it is not necessary that a statute, ordinance or other legislative act expressly create a subagency so long as there is an enabling provision which allows that subagency to come into existence at some future time.

Question No. 4: Are advisory committees, boards and commissions subject to the Open Meeting Law?

Answer: The Open Meeting Law defines “public agency” to include “any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act,”¹³ and “governing body” to include any body “with the authority to make decisions for or *recommendations* to a public agency regarding any matter.”¹⁴ Thus, advisory committees, boards and commissions are subject to the Open Meeting Law if the body is created by or pursuant to statute, ordinance, or other legislative act and if the body has authority to make recommendations to a public agency.

In contrast, an administrative committee, board or commission is not subject to the Open Meeting Law if it is not entrusted with the formation of public policy, but merely carries out the public policy established by a governing body, and if its activities do not constitute the making of “decisions for or recommendations to” a public agency.¹⁵ Likewise, the Open Meeting Law does not apply to voluntary, internal staff meetings if the group is not created by or pursuant to statute, ordinance or other legislative act, even though the discussions may lead to recommendations to the governing

¹² Idaho Code § 67-2341(4)(d); *Cathcart v. Anderson*, 85 Wash. 2d 102, 530 P.2d 313 (1975); Attorney General Opinion No. 7-75.

¹³ Idaho Code § 67-2341(4).

¹⁴ Idaho Code § 67-2341(5) (emphasis added).

¹⁵ *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 572, 548 P.2d 45, 72 (1976).

body.¹⁶ Generally, however, if you are ever unsure of whether a meeting should be open, it is this Office's recommendation to err on the side of opening the meeting.

Question No. 5: Does the Open Meeting Law apply to the governor?

Answer: The Open Meeting Law has no application to the governor when he is acting in his official executive capacity, since the Open Meeting Law does not apply to a public agency headed by a single individual.

**CHARITABLE ORGANIZATIONS (501C(3)) AND
HOMEOWNER'S ASSOCIATIONS**

Question No. 6: Do charitable organizations have to comply with the Idaho Open Meeting Law?

Answer: The Open Meeting Law applies only to governmental entities. Typically, charitable organizations are private. Generally, nonprofit organizations are governed by their chartering documents and bylaws. Additionally, Title 30, Chapter 3 of the Idaho Code, provides the legal foundation for Idaho nonprofits. Consult the chartering documents, bylaws and Idaho Code, Title 30, Chapter 3, to determine the requirements of corporate records and meetings.

Question No. 7: Do homeowners associations have to comply with the Idaho Open Meeting Law?

Answer: No. The Open Meeting Law applies only to governmental entities. Homeowners associations are private entities. Homeowners associations are generally governed by agreements between the members and the association and their bylaws. Members should consult their association documents and bylaws to determine the association rules for meetings.

¹⁶ See *Safe Air For Everyone v. Idaho State Dep't of Agriculture*, 145 Idaho 164, 177 P.3d 378 (2008); *People v. Carlson*, 328 N.E.2d 675 (Ill. App. Ct. 1975); *Bennett v. Warden*, 333 So.2d 97 (Fla. 1976).

PUBLIC ACTIONS OR ACTIVITIES COVERED BY THE OPEN MEETING LAW

Question No. 8: What constitutes a meeting under the Open Meeting Law?

Answer: The Open Meeting Law defines “meeting” to mean “the convening of a governing body of a public agency *to make a decision or to deliberate toward a decision* on any matter.”¹⁷ “Decision” is then defined to include “any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, *at any meeting at which a quorum is present.*”¹⁸

The term “deliberation” is also a defined term and means “the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.”¹⁹ Note that this does not require any discussion or preliminary decision making. Even the receipt of information relating to a “decision”—i.e., a measure on which the governing body will have to vote—amounts to deliberation, and therefore triggers the definition and requirements of a “meeting” under the Open Meeting Law.

Question No. 9: Does the term “meeting” include such things as informal gatherings, briefing sessions, informal discussions, attendance at social functions, etc.?

Answer: As noted above, a “meeting” is the convening of a governing body to make a decision or deliberate toward a decision. Additionally, a quorum must be present.²⁰

The California Court of Appeals discussed the dual facets of deliberation and action in *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*:

¹⁷ Idaho Code § 67-2341(6) (emphasis added).

¹⁸ Idaho Code § 67-2341(1) (emphasis added).

¹⁹ Idaho Code § 67-2341(2).

²⁰ *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 571, 548 P.2d 45, 71 (1976).

It [California's open meeting law] declares the law's intent that deliberation as well as action occur openly and publicly. Recognition of deliberation and action as dual components of the collective decision-making process brings awareness that the meeting concept cannot be split off and confined to one component only, but rather comprehends both and either. To "deliberate" is to examine, weigh and reflect upon the reasons for or against the choice Deliberation thus connotes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision.²¹

The California court then reasoned and ruled:

An informal conference or caucus permits crystallization of secret decisions to a point just short of ceremonial acceptance. There is rarely any purpose to a non-public, pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry in discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate these evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in light of the Brown Act's objectives, the term "meeting" extends to informal sessions or conferences of board members designed for the discussion of public business.²²

A similar result was reached by the Florida Supreme Court in the case of *City of Miami v. Berns* wherein the Florida court ruled that public officials violate Florida's open meeting law when they meet privately or secretly and transact or agree to transact public business at a future time in a certain manner.²³ The Florida court went on to state that, regardless of whether a meeting or gathering is formal or informal, "[i]t is the law's intent that any meetings,

²¹ *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 69 Cal. Rptr. 480, 485 (Cal. Ct. App. 1968).

²² *Id.* at 487.

²³ *City of Miami v. Berns*, 245 So.2d 38 (Fla. 1971).

relating to any matter on which foreseeable action will be taken, occur openly and publicly.”²⁴

The same considerations must be applied with respect to the Idaho Open Meeting Law. Therefore, it is the opinion of the Attorney General that the provisions of the Open Meeting Law must be complied with whenever a quorum of the members of the governing body of a public agency meets in order to decide or deliberate on matters which are within the ambit of official business. Those meetings can be formal, informal, or social. So long as a quorum is present and the intent is to deliberate or make a decision, then the meeting must be open.

The requirement that the Open Meeting Law be complied with whenever a quorum of a governing body meets to deliberate or to make a decision should not be evaded by holding smaller meetings with less than a quorum present or by having a go-between contact each of the governing body members to ascertain his/her sentiment.

Question No. 10: Since any meeting of two county commissioners constitutes a quorum under Idaho law, are county commissioners prohibited from having any contact with each other outside of a duly organized open meeting?

Answer: While it is the opinion of the Attorney General that the Open Meeting Law must be complied with whenever a quorum of the members of a governing body of a public agency meet to decide or deliberate on matters which are within the ambit of official business, this Office does not believe that the Legislature intended for the Open Meeting Law to act as a bar to all communications between individual county commissioners outside of open meetings.

Question No. 11: Are adjudicatory deliberations exempt from the Open Meeting Law?

Answer: Only for those agencies expressly exempted. The Open Meeting Law excludes the deliberations of certain agencies (the Board of Tax Appeals, the Public Utilities Commission and the Industrial Commission), in fully submitted adjudicatory proceedings,

²⁴ *Id.* at 41; see also *Canney v. Bd. of Pub. Instruction of Alachua Cnty*, 278 So.2d 260 (Fla. 1973); *Bd. of Pub. Instruction of Broward Cnty v. Doran*, 224 So.2d 693 (Fla. 1969).

from the requirement of open public meeting.²⁵ In creating this exemption for adjudicatory deliberations by only these three agencies, it appears the Legislature intended that non-adjudicatory deliberations at these agencies, and all deliberations at all other agencies—i.e., except for the above-described informal or impromptu discussions of a general nature—must be conducted in a public meeting. Of course, the subject matter under adjudication may be separately identified under the Open Meeting Law as justifying a closed executive session.

Question No. 12: Can I still address questions and comments to a commissioner or board member individually related to a pending matter?

Answer: In other words, as representatives, can I still contact members of a governing body with unsolicited “information or opinion relating to a decision” that is pending before the public agency?²⁶ The Idaho Supreme Court has addressed this specific question.

In *Idaho Historic Preservation Council v. City Council of Boise*, a divided Court overturned a Boise City Council decision that allowed a corporation to demolish a building in Boise.²⁷ In reviewing an appeal from the City’s Preservation Commission, members of the City Council stated at the public [open] meeting that they had received numerous telephone calls concerning the issue. Although the Court framed the issue in terms of due process, it may also raise open meeting questions.

In overturning the City’s decision, the Court stated:

[W]hen a governing body sits in a quasi-judicial capacity, it must confine its decision to the record produced at the public hearing, and that failing to do so violates procedural due process of law. This Court has also observed that when a governing body deviates from the public record, it essentially conducts a second fact-gathering session without proper notice, a clear violation of due process. Since the substance of the telephone calls received by the members of the City Council was not

²⁵ Idaho Code § 67-2342(2).

²⁶ Idaho Code § 67-2341(2).

²⁷ *Idaho Historic Pres. Council v. City Council of Boise*, 134 Idaho 651, 8 P.3d 646 (2000).

recorded or disclosed at the public hearing, the Commission had no opportunity to rebut any evidence or arguments the City Council may have received from the callers.

Id. at 654, 8 P.3d at 649 (internal citations omitted).

The Court concluded:

This decision does not hold the City Council to a standard of judicial disinterestedness. As explained above, members of the City Council are free to take phone calls from concerned citizens and listen to their opinions and arguments prior to a quasi-judicial proceeding. In order to satisfy due process, however, the identity of the callers must be disclosed, as well as a general description of what each caller said.²⁸

Therefore, in the event that unsolicited information is received and considered by a governing board member, the appropriate action is to disclose the source of the information and the substance of the information so that it may be included within the public record. In sum, any information that you wish to use to form the basis of your decision must be made a part of the public record.

PROCEDURAL REQUIREMENTS OF THE OPEN MEETING LAW

Question No. 13: What are the notice requirements of the Open Meeting Law?

Answer: The Open Meeting Law requires two types of notice: (1) meeting notice and (2) agenda notice. The notice requirements are satisfied by posting meeting notices and agendas in a prominent place at the principal office of the public agency, or, if no such office exists, at the building where the meeting is to be held. The Open Meeting Law does not require publication of the notice in a newspaper or advertisement. However, other statutes governing particular entities may require publication of notice.

The Open Meeting Law also requires that notice be posted at specific minimum times prior to the meeting. These times vary,

²⁸ *Id.* at 656, 8 P.3d at 651.

depending on the type of meeting being held. The notice of an executive session must state the authorizing provision of law.

Question No. 14: What are the notice and agenda requirements for a regular meeting?

Answer: For “regular meetings,” the Open Meeting Law requires no less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice, unless otherwise provided by statute.²⁹ Any public agency that holds meetings at regular intervals at least once per calendar month, which are scheduled in advance over the course of the year, may satisfy this notice requirement by posting meeting notices at least once each year of its regular meeting schedule. Agenda notice must still be posted at least 48 hours before the meeting.

Question No. 15: What are the notice and agenda requirements for a special meeting or executive session only meeting?

Answer: For “special meetings,” or when only an “executive session” will be held, meeting and agenda notice must be posted at least twenty-four (24) hours before the meeting, unless an emergency exists. An emergency is a situation which involves injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of the section would make such notice impractical, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. This notice and an accompanying agenda must be given by the secretary or other designee of each public agency to any representative of the news media who has requested notification of such meetings and the secretary must make a good faith effort to provide such advance notification to them of the time and place of each meeting.³⁰

Question No. 16: What must an agenda contain?

Answer: What constitutes an “agenda” to satisfy the posting requirement is not set forth in the Open Meeting Law. However, an “agenda” is defined in *Black’s Law Dictionary* (9th ed.) as a “list of

²⁹ Idaho Code § 67-2343.

³⁰ Idaho Code § 67-2343(2) and (3).

things to be done, as items to be considered at a meeting, [usually] arranged in order of consideration.” The agenda notice requirement is not satisfied by merely posting a weekly schedule of the governing board which sets forth the time, place of the meetings, and who is participating. Rather, the notice must specifically set forth the purpose of the meeting and “items of business.” Agenda items should be listed with specificity and not buried in catchall categories such as “director’s report.”

Question No. 17: May an agenda be amended after posting?

Answer: Yes. The procedure depends on when the agenda is amended.

More than 48 hours before the start of a meeting (or more than 24 hours before a special meeting), the agenda may be amended simply by posting a new agenda.

Less than 48 hours before the meeting (or less than 24 hours before a special meeting), but before the meeting has started, the agenda may be amended by: (1) posting the new agenda, and (2) making and passing a motion at the meeting to amend the original agenda and stating the good faith reason the new items were not included in the original agenda notice.

After commencement of the meeting, the agenda may be amended to accommodate unforeseen issues, provided that: (1) there is a motion made that states the good faith reason the new item was not on the original agenda, and (2) the motion to amend is adopted by the governing body.

To sum up, amending an agenda during a meeting or less than 48 hours before the start of a meeting (24 hours for a special meeting) requires: (1) a motion, (2) a good faith reason why the item was not included in the original agenda, (3) a vote adopting the amended agenda, and (4) a record of the motion and vote in the minutes of the meeting.

Question No. 18: May qualifications or restrictions be placed on the public’s attendance at an open meeting?

Answer: A public agency may adopt reasonable rules and regulations to ensure the orderly conduct of a public meeting and to ensure orderly behavior on the part of those persons attending the

meeting. In *Nevens v. City of Chino*, a California appellate court nullified a city council measure, which prohibited the use of any tape recorders at city council proceedings.³¹ While acknowledging that the city council had an absolute right to adopt and enforce rules and regulations necessary to protect its public meetings, the court held that the rule prohibiting tape recorders was too arbitrary, capricious, restrictive and unreasonable. A similar holding might be reached if a governing body prohibits the use of cameras if their presence is not in fact disruptive of the conduct of the meeting.

Another limitation is that the body cannot make it practically impossible for the public to be present at a meeting. For example, in *Noble v. Kootenai County*, a board of commissioners conducted a site visit to a proposed subdivision. When arriving at the site, the board intentionally avoided a group that was gathered near the entrance to the site location and conducted its site visit outside the group's hearing. The court held that this was a violation, stating that "Idaho's open meeting laws . . . are designed to allow the public to be present during agency hearings. At the very least this means that the public must be permitted to get close enough to the hearing body to hear what is being said."³²

In any event, the governing standard is the reasonableness of the rules and regulations. Use of a timed agenda, "heavy gavel" and/or compliance with Robert's Rules of Order or some other procedural guideline may serve to facilitate the orderly conduct of a public meeting.

Question No. 19: Does the Open Meeting Law require the governing body of a public agency to accept public comments and testimony during meetings?

Answer: No. While other statutes, such as the Local Planning Act, may require the solicitation of public comments, the Open Meeting Law does not expressly require the opportunity for public comment.³³

³¹ *Nevens v. City of Chino*, 44 Cal. Rptr. 50 (Cal. Ct. App. 1965).

³² *Noble v. Kootenai County*, 148 Idaho 937, 943, 231 P.3d 1034, 1040 (2010).

³³ See *Coalition for Responsible Government v. Bonner County*, First Judicial District, Bonner County Case No. CV-97-00107 (May 15, 1997) (on file with the Office of the Attorney General).

Question No. 20: May the members of a governing body vote by secret ballot at an open meeting?

Answer: No decision at any meeting of a governing body of a public agency may be made by secret ballot.³⁴

Question No. 21: If a voice vote is used, must the minutes of the meeting reflect the vote of each member of a governing body by name?

Answer: If a voice vote is taken, the minutes of the meeting must reflect the results of all votes, but the minutes need not indicate how each member voted, unless a member of the governing body requests such an indication.³⁵

Question No. 22: May a vote be conducted by written ballots?

Answer: A vote may be conducted by written ballot, but written ballots would not comply with the Open Meeting Law unless the ballots are made available to the public on request and unless the members casting the ballots are identifiable by signature or other discernible means.³⁶ The reason identification of the vote of individual members is treated differently between voice votes and votes by written ballot is that, with respect to voice votes, members of the public in attendance can readily ascertain the vote of individual members of the governing body. In contrast, a vote by written ballot is tantamount to a secret vote, unless such ballot is signed or identifies the name of the voting member.

Question No. 23: What types of records must be maintained under the Open Meeting Law?

Answer: The Open Meeting Law requires that the governing body of a public agency must provide for the taking of written minutes of all of its meetings, but it is not necessary to make a full transcript or recording of the meeting, except as otherwise provided by law.³⁷ These minutes are public records and must be made available to the

³⁴ Idaho Code § 67-2342(1).

³⁵ Idaho Code § 67-2344(1)(c).

³⁶ Attorney General Opinion No. 77-13.

³⁷ Idaho Code § 67-2344(1).

general public within a reasonable time after the meeting. The minutes must include, at a minimum, the following information:

- (a) All members of the governing body present;
- (b) All motions, resolutions, orders, or ordinances proposed and their disposition;
- (c) The results of all votes and, upon the request of a member of the governing body, the vote of each member by name.

Other statutes may provide more specific requirements for particular entities.

In addition, section 67-2344(2) provides that minutes of executive sessions must be kept, but they need contain only sufficient detail to identify the purpose and topic of the executive session and do not need to include the disclosure of material or matters that compromise the purpose of the executive session. The minutes pertaining to the executive session, however, must include a reference to the specific statutory subsection authorizing the session.

Question No. 24: Are there any prohibitions on where a public meeting may be held?

Answer: Yes. Section 67-2342(3) specifically provides: “A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.” Thus, for example, a public meeting may not be held at a private club if the private club excludes women from membership, even if women are allowed entrance for the purpose of attending the meeting.

Question No. 25: Does the Open Meeting Law permit holding a meeting by telephone conference call?

Answer: Yes. The Open Meeting Law specifically authorizes the holding of a meeting by telephone conference call. However, at least one member of the governing body or the director or chief administrative officer must be physically present at the meeting

location designated in the meeting notice.³⁸ Additionally, the communications among the members of the governing body must be audible to all persons attending the meeting. Care should also be taken to ensure that votes are not made in such a way to permit an illegal secret ballot or vote.

Question No. 26: Are discussions conducted via telephones, computers, cell phones (including texting) or other electronic means exempted from the Open Meeting Law?

Answer: As discussed in this manual, the Open Meeting Law applies to the deliberations and discussions between two or more members of a board or commission on some matter which foreseeably will come before that board or commission for action. The use of a telephone to conduct such discussions does not remove the conversation from the requirements of the Open Meeting Law.

Similarly, members of a public board may not use computers or texting to conduct private conversations among themselves about board business. A one-way e-mail or text communication from one city council member to another, when it does not result in the exchange of council members' comments or responses on subjects requiring council action, does not constitute a meeting subject to the Open Meeting Law; however, such e-mail or text communications are public records and must be maintained by the records custodian for public inspection and copying.

SPECIFIC STATUTORY EXEMPTIONS: EXECUTIVE SESSIONS

Question No. 27: What types of meetings may be closed under the Open Meeting Law?

Answer: A closed meeting—that is, an “executive session”—may be held for the reasons listed in § 67-2345(1):

- (a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need, unless a vacancy in an elective office is being filled;

³⁸ Idaho Code § 67-2342(5).

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(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student;

(c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided by law;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

This provision enumerates specific and not general statutory exemptions to the requirement of conducting an open meeting. It is the Attorney General's opinion that a public agency cannot conduct an executive session to consider general personnel matters, but can only meet in executive session to consider those specifically enumerated personnel matters found at section 67-2345(1)(a) and (b); that is, "to consider hiring a public officer, employee, staff

member or individual agent” or “to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, individual agent or public school student.” Additionally, Idaho Code section 67-2345(3) specifically directs that the exceptions be construed narrowly. No entity should try to “shoehorn” an issue into an executive session exception.

With respect to labor negotiations, section 67-2345(2) specifically provides that labor negotiations may be conducted in executive session if either side requests closed meetings. Further, any subsequent negotiation sessions may continue without further public notice, notwithstanding the notice requirements of section 67-2343.

An executive session may be held to consider acquiring an interest in real property that is not owned by a public agency. However, an executive session cannot be held for the purpose of acquiring an interest in real property owned by a public agency.³⁹

It should be noted that the Open Meeting Law establishes circumstances where executive sessions are permissible. In other words, the act authorizes, but does not require, closed meetings. In addition, even though certain enumerated matters may be “considered” in an executive session, it must be emphasized that: “[N]o executive session may be held for the purpose of taking any final action or making any final decision.”⁴⁰

It is important to remember that section 67-2345(1) sets forth specific procedural steps to be followed in order to have a valid executive session. *Failure to do so will invalidate any action taken as a result of the executive session. Additionally, it may subject the board members to liability for those actions.* Procedurally, the presiding officer must identify the specific authorization under the Open Meeting Law for the holding of an executive session and at least a two-thirds ($\frac{2}{3}$) vote in favor of the executive session must be recorded in the minutes of the meeting by individual vote.

³⁹ Attorney General Opinion No. 81-15.

⁴⁰ Idaho Code § 67-2345(4); Attorney General Opinion No. 77-44; Attorney General Opinion No. 81-15.

Question No. 28: What procedure must be followed before an executive session, closed to the public, may be held?

Answer: It must be noted that executive sessions take place only at meetings. Before any executive session may be held, there must be a valid open meeting and a vote to hold an executive session. Every such “meeting” must satisfy the Open Meeting Law’s notice and agenda requirements.⁴¹ If the governing body of a public agency then wishes to consider matters which may legally be considered in a closed meeting, an executive session may be held if two-thirds (2/3) of the members vote to hold an executive session. Prior to such vote, the presiding officer must identify the authorization under the Open Meeting Law for the holding of an executive session. Then, when the vote is taken, the individual vote of each member of the governing body must be recorded in the minutes.⁴²

Question No. 29: May legal counsel meet privately with the governing body of a public agency to discuss threatened or pending litigation?

Answer: Yes. Section 67-2345(f) expressly provides that an executive session may be held “[t]o communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated.”

Question No. 30: Must the governing body’s attorney be present during an executive session?

Answer: Generally, the governing body’s attorney need not be present when the governing body meets in executive session. An exception is an executive session authorized under Idaho Code section 67-2345(1)(f): “To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement.” (Of course, the attorney’s “presence” may be facilitated via a telecommunications device.) An executive session under this subsection is solely for the purpose of communicating with legal counsel on pending or probable litigation.

⁴¹ Idaho Code § 67-2343.

⁴² Idaho Code § 67-2345(1).

Question No. 31: If a more specific statute requires open meetings and has no provision for executive sessions, is the executive session provision of the Open Meeting Law still applicable?

Answer: Yes. The executive session provision takes precedence over other statutes that may apply to a particular entity. Thus, even if a statute requires all meetings of a governing body to be open, executive sessions may still be held.⁴³

PENALTIES FOR NONCOMPLIANCE

Question No. 32: What is the validity of action taken in violation of the Open Meeting Law?

Answer: If an action, or any deliberation or decision making that leads to an action, occurs at any meeting that fails to comply with the provisions of the Open Meeting Law, such an action may be declared null and void by a court.⁴⁴

Any member of the governing body taking such an action, who participates in any such deliberation, decision making, or meeting, is subject to a civil penalty not to exceed fifty dollars (\$50).⁴⁵ The maximum civil penalty for a subsequent violation is five hundred dollars (\$500).⁴⁶

Any governing body member who knowingly violates a provision of this act is subject to a civil penalty of not more than five hundred dollars (\$500).⁴⁷

It is the opinion of the Attorney General that the Idaho Legislature intended that such fines be paid by the individual member of the governing body, not the governing body itself.

Question No. 33: Who enforces the Open Meeting Law?

Answer: The Attorney General enforces the Open Meeting Law in

⁴³ *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

⁴⁴ Idaho Code § 67-2347(1).

⁴⁵ Idaho Code § 67-2347(2).

⁴⁶ Idaho Code § 67-2347(4).

⁴⁷ Idaho Code § 67-2347(3).

relation to the public agencies of state government. County prosecuting attorneys enforce the Open Meeting Law in relation to the local public agencies within their respective jurisdictions.⁴⁸

Any person affected by a violation of the Open Meeting Law is entitled to bring a lawsuit in the magistrates' division of the county in which the public agency normally meets for the purpose of requiring compliance with the provisions of the Open Meeting Law. The lawsuit would ask the court to declare any improper actions void and to enjoin the governing body from violating the Open Meeting Law in the future. Such a lawsuit must be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of the Open Meeting Law. Any other lawsuit must be commenced within one hundred eighty (180) days of the time of the violation.⁴⁹

Question No. 34: If there is a violation of the Open Meeting Law at an early stage in the process, will all subsequent actions be null and void?

Answer: Yes. Section 67-2347(1) clearly indicates that an action or any deliberation or decision making that leads to an action, which occurs at any meeting not in compliance with the provisions of the Open Meeting Law, will be null and void. The 1992 Legislature added the "deliberation or decision making that leads to an action" language to the provisions of section 67-2347(1). This language clarifies the consequences of a violation under the previous requirement.

The Idaho Supreme Court has held that the procedure for voiding actions taken in violation of the Open Meeting Law must be read literally. Thus, any action may not be declared void if it is not challenged within the thirty-day time limit established by section 67-2347(6).⁵⁰

Question No. 35: If a violation of the Open Meeting Law occurs, what can a governing body do to correct the error?

Answer: The governing body should follow the steps outlined in

⁴⁸ Idaho Code § 67-2347(5).

⁴⁹ Idaho Code § 67-2347(6).

⁵⁰ *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

Idaho Code § 67-2347(7) to “cure” the violation. A violation is cured by repealing any action taken at an illegal meeting or disregarding deliberations made in violation of the Open Meeting Law. Should it choose to, a governing body may, in a properly noticed meeting, repeat the deliberation or decision that occurred at the illegal meeting.

Question No. 36: Are members of the governing body of a public agency criminally liable for violations of the Open Meeting Law in which they knowingly participate?

Answer: The Open Meeting Law specifically provides civil monetary penalties for violations. The Open Meeting Law does not expressly provide for criminal liability for knowing violations. Nonetheless, it is possible that a member of a governing body may be guilty of a misdemeanor for violations of the Open Meeting Law in which he or she knowingly participates.

Idaho Code Section 18-315 provides:

Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision shall have been made for the punishment of such delinquency, is punishable as a misdemeanor.

Idaho Code Section 18-317 states:

When an act or omission is declared by a statute to be a public offense and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

In *Alder v. City Council of City of Culver City*, the court considered the California Open Meeting Law (the Brown Act), which included no penalty provisions or provisions for enforcement when violations occur.⁵¹ Relying on two California statutes identical to Idaho Code sections 18-315 and 18-317, the California court ruled that violations of the Open Meeting Law were punishable as misdemeanors even though the Open Meeting Law did not expressly make violations punishable as misdemeanors.

⁵¹ *Alder v. City Council of City of Culver City*, 7 Cal. Rptr. 805 (Cal. Ct. App. 1960).

THE STATUTE

(Idaho Code §§ 67-2340 to 67-2347)

67-2340. Formation of public policy at open meetings. The people of the state of Idaho in creating the instruments of government that serve them, do not yield their sovereignty to the agencies so created. Therefore, the legislature finds and declares that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret.

67-2341. Open Public Meetings—Definitions. As used in this act:

(1) “Decision” means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with sections 67-2342 through 67-2346, Idaho Code.

(2) “Deliberation” means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature which do not specifically relate to a matter then pending before the public agency for decision.

(3) “Executive session” means any meeting or part of a meeting of a governing body which is closed to any persons for deliberation on certain matters.

(4) “Public agency” means:

(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the district magistrates commission;

(b) any regional board, commission, department or authority created by or pursuant to statute;

(c) any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho;

(d) any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act.

(5) “Governing body” means the members of any public agency which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.

(6) “Meeting” means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.

(a) “regular meeting” means the convening of a governing body of a public agency on the date fixed by law or rule, to conduct the business of the agency.

(b) “special meeting” is a convening of the governing body of a public agency pursuant to a special call for the conduct of business as specified in the call.

67-2342. Governing bodies—Requirement for open public meetings.

(1) Except as provided below, all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

(2) Deliberations of the board of tax appeals created in chapter 38, title 63, Idaho Code, the public utilities commission and the industrial commission in a fully submitted adjudicatory proceeding in which hearings, if any are required, have been completed, and in which the legal rights, duties or privileges of a party are to be determined are not required by this act to take place in a meeting open to the public. Such deliberations may, however, be made and/or conducted in a public meeting at the discretion of the agency.

(3) Meetings of the Idaho life and health insurance guaranty association established under chapter 43, title 41, Idaho Code, the Idaho insurance guaranty association established under chapter 36, title 41, Idaho Code, and the surplus line association approved by the director of the Idaho department of insurance as authorized under chapter 12, title 41, Idaho Code, are not required by this act to take place in a meeting open to the public.

(4) A governing body shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age or national origin is practiced.

(5) All meetings may be conducted using telecommunications devices which enable all members of a governing body participating in the meeting to communicate with each other. Such devices may include, but are not limited to, telephone or video conferencing devices and similar communications equipment. Participation by a member of the governing body through telecommunications devices shall constitute presence in person by such member at the meeting; provided however, that at least one (1) member of the governing body, or the director of the public agency, or the chief administrative officer of the public agency shall be physically present at the location designated in the meeting notice, as required under section 67-2343, Idaho Code, to ensure that the public may attend such meeting in person. The communications among members of a governing body must be audible to the public attending the meeting in person and the members of the governing body.

67-2343. Notice of meetings—Agendas.

(1) Regular meetings. No less than a five (5) calendar day meeting notice and a forty-eight (48) hour agenda notice shall be given unless otherwise provided by statute. Provided however, that any public agency that holds meetings at regular intervals of at least once per calendar month scheduled in advance over the course of the year may satisfy this meeting notice by giving meeting notices at least once each year of its regular meeting schedule. The notice requirement for meetings and agendas shall be satisfied by posting such notices and agendas in a prominent place at the principal office of the public agency, or if no such office exists, at the building where the meeting is to be held.

(2) Special meetings. No special meeting shall be held without at least a twenty-four (24) hour meeting and agenda notice, unless an emergency exists. An emergency is a situation involving injury or damage to persons or property, or immediate financial loss, or the likelihood of such injury, damage or loss, when the notice requirements of this section would make such notice impracticable, or increase the likelihood or severity of such injury, damage or loss, and the reason for the emergency is stated at the outset of the meeting. The notice required under this section shall include at a minimum the meeting date, time, place and name of the public agency calling for the meeting. The secretary or other designee of each public agency shall maintain a list of the news media requesting notification of meetings and shall make a

good faith effort to provide advance notification to them of the time and place of each meeting.

(3) Executive sessions. If an executive session only will be held, a twenty-four (24) hour meeting and agenda notice shall be given according to the notice provisions stated in subsection (2) of this section and shall state the reason and the specific provision of law authorizing the executive session.

(4) An agenda shall be required for each meeting. The agenda shall be posted in the same manner as the notice of the meeting. An agenda may be amended, provided that a good faith effort is made to include, in the original agenda notice, all items known to be probable items of discussion.

(a) If an amendment to an agenda is made after an agenda has been posted but forty-eight (48) hours or more prior to the start of a regular meeting, or twenty-four (24) hours or more prior to the start of a special meeting, then the agenda is amended upon the posting of the amended agenda.

(b) If an amendment to an agenda is proposed after an agenda has been posted and less than forty-eight (48) hours prior to a regular meeting or less than twenty-four (24) hours prior to a special meeting but prior to the start of the meeting, the proposed amended agenda shall be posted but shall not become effective until a motion is made at the meeting and the governing body votes to amend the agenda.

(c) An agenda may be amended after the start of a meeting upon a motion that states the reason for the amendment and states the good faith reason the agenda item was not included in the original agenda posting.

67-2344. Written minutes of meetings.

(1) The governing body of a public agency shall provide for the taking of written minutes of all its meetings. Neither a full transcript nor a recording of the meeting is required, except as otherwise provided by law. All minutes shall be available to the public within a reasonable time after the meeting, and shall include at least the following information:

(a) All members of the governing body present;

(b) All motions, resolutions, orders, or ordinances proposed and their disposition;

(c) The results of all votes, and upon the request of a member, the vote of each member, by name.

(2) Minutes pertaining to executive sessions. Minutes pertaining to an executive session shall include a reference to the specific statutory subsection authorizing the executive session and shall also provide sufficient detail to identify the purpose and topic of the executive session but shall not contain information sufficient to compromise the purpose of going into executive session.

67-2345. Executive sessions—When authorized.

(1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds ($\frac{2}{3}$) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 3, title 9, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law; or

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement.

(2) Labor negotiations may be conducted in executive session if either side requests closed meetings. Notwithstanding the provisions of section 67-2343, Idaho Code, subsequent sessions of the negotiations may continue without further public notice.

(3) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(4) No executive session may be held for the purpose of taking any final action or making any final decision.

67-2346. Open legislative meetings required. All meetings of any standing, special or select committee of either house of the legislature of the state of Idaho shall be open to the public at all times, except in extraordinary circumstances as provided specifically in the rules of procedure in either house, and any person may attend any meeting of a

standing, special or select committee, but may participate in the committee only with the approval of the committee itself.

67-2347. Violations.

(1) If an action, or any deliberation or decision making that leads to an action, occurs at any meeting which fails to comply with the provisions of sections 67-2340 through 67-2346, Idaho Code, such action shall be null and void.

(2) Any member of the governing body governed by the provisions of sections 67-2340 through 67-2346, Idaho Code, who conducts or participates in a meeting which violates the provisions of this act shall be subject to a civil penalty not to exceed fifty dollars (\$50.00).

(3) Any member of a governing body who knowingly violates the provisions of this act shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(4) Any member of a governing body who violates any provision of this act and who has previously admitted to committing or has been previously determined to have committed a violation of this act within the twelve (12) months preceding this subsequent violation shall be subject to a civil penalty not to exceed five hundred dollars (\$500).

(5) The attorney general shall have the duty to enforce this act in relation to public agencies of state government, and the prosecuting attorneys of the various counties shall have the duty to enforce this act in relation to local public agencies within their respective jurisdictions. In the event that there is reason to believe that a violation of the provisions of this act has been committed by members of a board of county commissioners or, for any other reason a county prosecuting attorney is deemed disqualified from proceeding to enforce this act, the prosecuting attorney or board of county commissioners shall seek to have a special prosecutor appointed for that purpose as provided in section 31-2603, Idaho Code.

(6) Any person affected by a violation of the provisions of this act may commence a civil action in the magistrate division of the district court of the county in which the public agency ordinarily meets, for the purpose of requiring compliance with provisions of this act. No private action brought pursuant to this subsection shall result in the assessment of a civil penalty against any member of a public agency and there shall be no private right of action for damages arising out of any violation of

the provisions of sections 67-2342 through 67-2346, Idaho Code. Any suit brought for the purpose of having an action declared or determined to be null and void pursuant to subsection (1) of this section shall be commenced within thirty (30) days of the time of the decision or action that results, in whole or in part, from a meeting that failed to comply with the provisions of this act. Any other suit brought under the provisions of this section shall be commenced within one hundred eighty (180) days of the time of the violation or alleged violation of the provisions of this act.

(7) [Curing a violation.]

(a) A violation may be cured by a public agency upon:

(i) The agency's self-recognition of a violation; or

(ii) Receipt by the secretary or clerk of the public agency of written notice of an alleged violation. A complaint filed and served upon the public agency may be substituted for other forms of written notice. Upon notice of an alleged open meeting violation, the governing body shall have fourteen (14) days to respond publicly and either acknowledge the open meeting violation and state an intent to cure the violation or state that the public agency has determined that no violation has occurred and that no cure is necessary. Failure to respond shall be treated as a denial of any violation for purposes of proceeding with any enforcement action.

(b) Following the public agency's acknowledgment of a violation pursuant to paragraph (a)(i) or (a)(ii) of this subsection, the public agency shall have fourteen (14) days to cure the violation by declaring that all actions taken at or resulting from the meeting in violation of this act void.

(c) All enforcement actions shall be stayed during the response and cure period but may recommence at the discretion of the complainant after the cure period has expired.

(d) A cure as provided in this section shall act as a bar to the imposition of the civil penalty provided in subsection (2) of this section. A cure of a violation as provided in subsection (7)(a)(i) of this section shall act as a bar to the imposition of any civil penalty provided in subsection (4) of this section.

**SUMMARY OF DECISIONS INTERPRETING THE IDAHO
OPEN MEETING STATUTE**

IDAHO ATTORNEY GENERAL'S OFFICE

REPORTED DECISIONS

1. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997) (actions that violate Open Meeting Law that are not challenged within the time limit established by Idaho Code § 67-2347(4) are not void).
2. *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994) (merely alleging violation of Open Meeting Law, without additionally alleging a specific “palpable injury,” is insufficient to confer standing).
3. *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185 (1986) (an aggrieved party will not prevail in a claim for improper notice under the Open Meeting Law when they cannot demonstrate any disadvantage stemming from the deficient notice).
4. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985) (Open Meeting Law’s provisions authorizing executive sessions preempt Idaho Code § 31-713’s requirement that all meetings of county commissioners must be public).
5. *Gardner v. School Dist. No. 55*, 108 Idaho 434, 700 P.2d 56 (1985).
6. *Baker v. Ind. School Dist. of Emmett*, 107 Idaho 608, 691 P.2d 1223 (1984).
7. *State v. City of Hailey*, 102 Idaho 511, 633 P.2d 576 (1981).
8. *Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).
9. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).
10. *Idaho Historic Preservation Council v. City Council of Boise*, 134 Idaho 651, 8 P.3d 646 (2000).

Idaho Open Meeting Law Manual

11. *Farrell v. Lemhi County Board of Commissioners*, 138 Idaho 378; 64 P.3d 304 (2002).
12. *State v. Yzaguirre*, 144 Idaho 471, 163 P.3d 1183 (2007).
13. *Safe Air For Everyone v. Idaho State Dep't. of Agri.*, 145 Idaho 164, 177 P.3d 378 (2008).
14. *City of McCall v. Buxton*, 146 Idaho 656, 201 P.3d 629 (2009).
15. *Idaho Press Club, Inc. v. State Legislature of the State*, 142 Idaho 640, 132 P.3d 397 (2006).
16. *Fox v. Estep*, 118 Idaho 454, 797 P.2d 854 (1990).
17. *Acheson v. Klauser*, 139 Idaho 156, 75 P.3d 210 (Idaho Ct. App. 2003).
18. *Noble v. Kootenai County ex rel. Kootenai County Bd. of Comm'rs*, 148 Idaho 937, 231 P.3d 1034 (2010), reh'g denied (May 19, 2010).

UNREPORTED DECISIONS

(On File with the Office of Attorney General)

1. *Coalition for Responsible Government v. Bonner County*, First Judicial District, Bonner County Case No. CV-97-00107 (May 15, 1997) (insufficient notice in agenda may trigger Open Meeting Law violation).
2. *State v. Thorne*, et al.; Idaho Fourth Judicial District No. 3L-97763 (1994).
3. *Playfair v. S. Lemhi Sch. Dist. 292 Bd. of Trustees*, CIV. 09-375, 2009 WL 2474205 (D. Idaho Aug. 12, 2009).

ATTORNEY GENERAL'S OFFICE ANALYSES

1. Attorney General Opinion No. 08-3, 2008 WL 4360202.
2. Attorney General Opinion 85-9, (December 31, 1985) 1985 WL 167852.
3. Attorney General Opinion 89-7, (July 19, 1989) 1989 WL 4084.

**State of Idaho
Office of the Attorney General**

OPEN MEETING LAW CHECKLIST

Regular Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- Meeting Notice posted 5 or more calendar days prior to the meeting date.
[Idaho Code § 67-2343(1)]
- Agenda Notice posted at least 48 hours prior to the meeting.
[Idaho Code § 67-2343(1)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes.
[Idaho Code § 67-2344(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting.
[Idaho Code § 67-2344(1)]

State of Idaho
Office of the Attorney General
OPEN MEETING LAW CHECKLIST
Special Meetings

Meeting Date and Time: _____

Meeting Location: _____

[Idaho Code § 67-2342(4) and (5)]

Before Meeting

- Meeting and Agenda Notice posted **at least 24 hours** prior to the meeting. [Idaho Code § 67-2343(2)]
- Notification provided to the news media. [Idaho Code § 67-2343(2)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

During Meeting

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Meeting

- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

**State of Idaho
Office of the Attorney General
OPEN MEETING LAW CHECKLIST
*Executive Sessions***

Session Date and Time: _____

Session Location: _____

[Idaho Code § 67-2342(4) and (5)]

Executive Session Only

- Meeting and Agenda Notice posted **at least 24 hours** prior to the session. [Idaho Code § 67-2343(3)]
- Posting of Amended Agenda [Idaho Code § 67-2343(4)]

Executive Session During Regular or Special Meeting

- Motion to enter Executive Session to discuss one of the exemptions listed in Idaho Code § 67-2345.
- $\frac{2}{3}$ vote to enter Executive Session reflected in regular/special meeting minutes. [Idaho Code § 67-2345(1)]

During Session

- First: Any agenda amendments? [Idaho Code § 67-2343(4)(b) and (c)]
- Secretary or other person appointed to take minutes. [Idaho Code § 67-2344(1)]

After Session

- Minutes must reference statutory subsection authorizing executive session and identify purpose and topic of session. [Idaho Code § 67-2344(2)]
- Minutes available to the public within a reasonable time after the meeting. [Idaho Code § 67-2344(1)]

>> **SAMPLE FORM** <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

EXECUTIVE SESSION MOTION AND ORDER

_____ (print name), _____ (print title),
MOVES THAT THE BOARD, PURSUANT TO IDAHO CODE § 67-2345,
CONVENE IN EXECUTIVE SESSION TO: (identify one or more of the following)

- Consider personnel matters [Idaho Code § 67-2345(1)(a) & (b)]
- Deliberate regarding labor negotiations or acquisition of an interest in real property [Idaho Code § 67-2345(1)(c)]
- Consider records that are exempt from public disclosure [Idaho Code § 67-2345(1)(d)]
- Consider preliminary negotiations involving matters of trade or commerce in which this governing body is in competition with another governing body [Idaho Code § 67-2345(1)(e)]
- Communicate with legal counsel regarding pending/imminently-likely litigation [Idaho Code § 67-2345(1)(f)]
- Communicate with risk manager/insurer regarding pending/imminently-likely claims [Idaho Code § 67-2345(1)(j)]
- Conduct labor negotiations [Idaho Code § 67-2345(2)]

Purpose/Topic summary (required): _____
AND THE VOTE TO DO SO BY ROLL CALL.

CONVENE AT: _____ ADJOURN AT: _____

	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

>> **SAMPLE FORM** <<

Public Agency: _____, Idaho
(name of county, city, district, etc.)

Governing Body: _____
(i.e., "Board of County Commissioners", "City Council", etc.)

Meeting Date, Time and Location: _____

MOTION AND ORDER TO AMEND AGENDA

(less than 48 hours before regular meeting or 24 hours before special meeting)

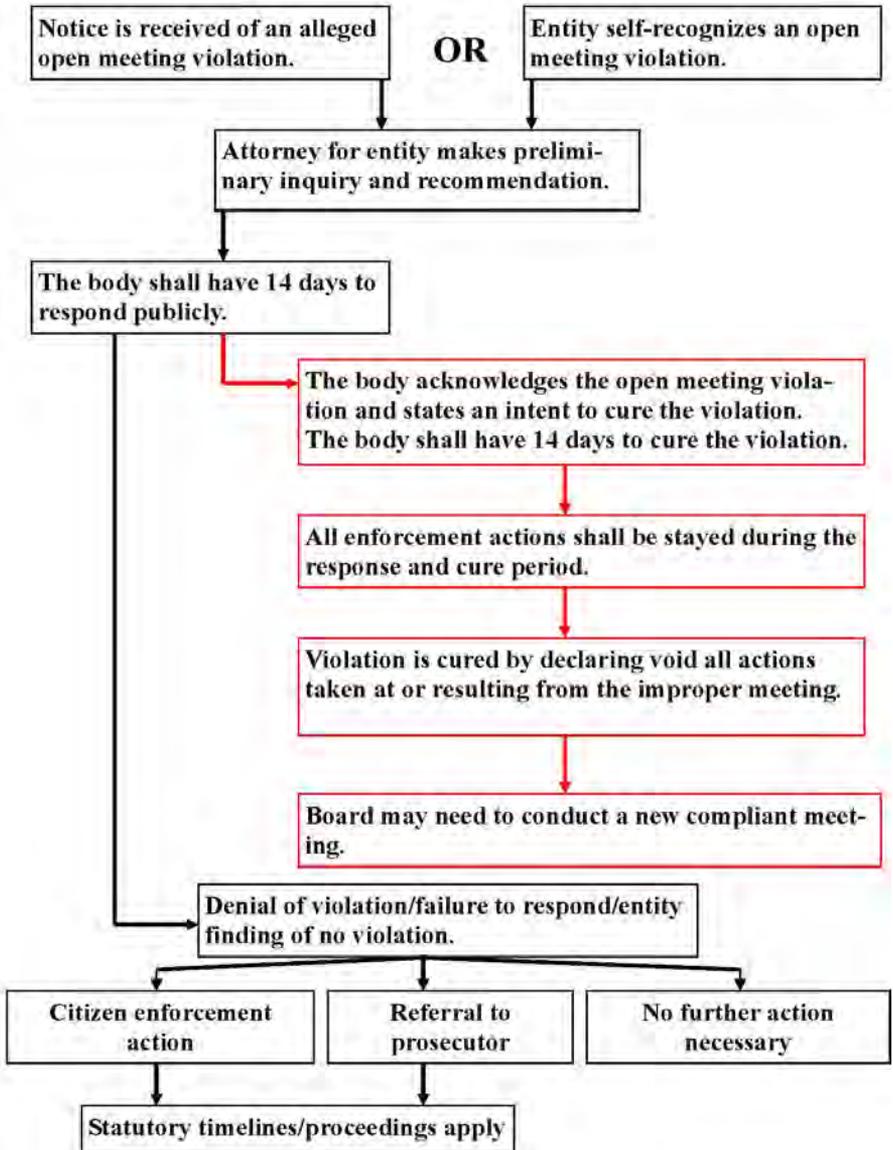
_____ (print name), _____ (print title),
MOVES THAT THIS GOVERNING BODY, PURSUANT TO IDAHO CODE
§ 67-2343, AMEND THE AGENDA FOR THIS MEETING AS FOLLOWS:

Good faith reason item not included in posted agenda (required):

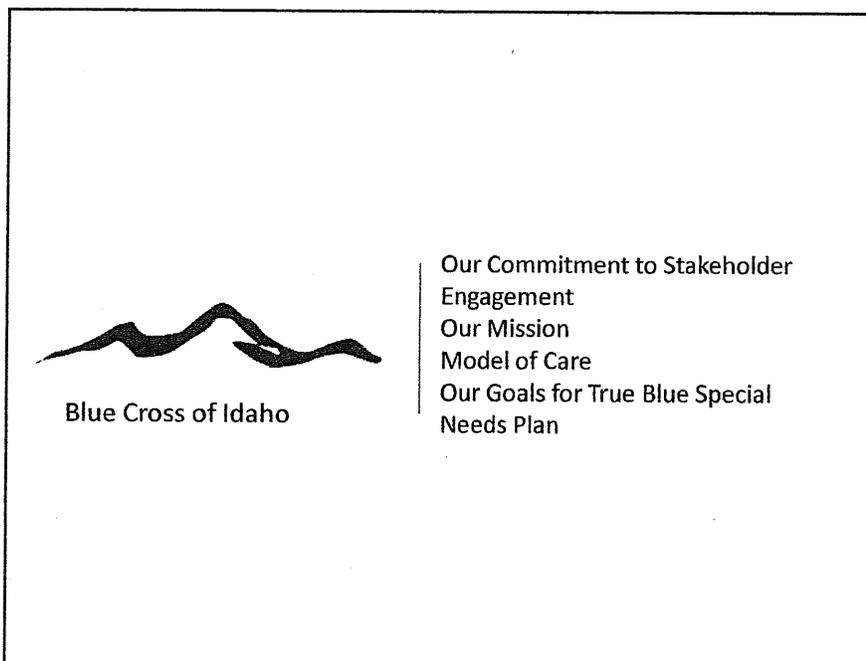
	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>
_____, Chair (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____
_____, Member (print name)	_____	_____	_____

Clerk/Deputy Clerk: _____
(Signature)

Curing Process – Idaho Code § 67-2347(7)



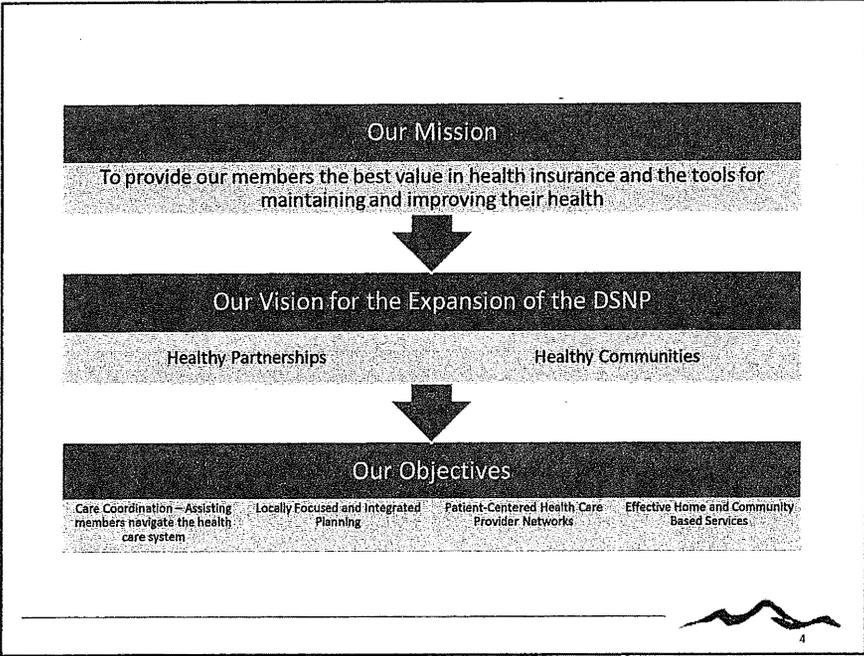
Attachment 2



Blue Cross of Idaho is committed to Stakeholder Engagement

Blue Cross of Idaho has a strong commitment to working in partnership with our local communities and our statewide stakeholders including: primary health care professionals, hospitals, nursing homes, advocates and health/social services (including HCBS), all levels of government and the not-for-profit sectors.

Partnerships begin with clear information, an understanding of vision and aligned goals



**Managing a Special Needs Plan
Model of Care Requirements**

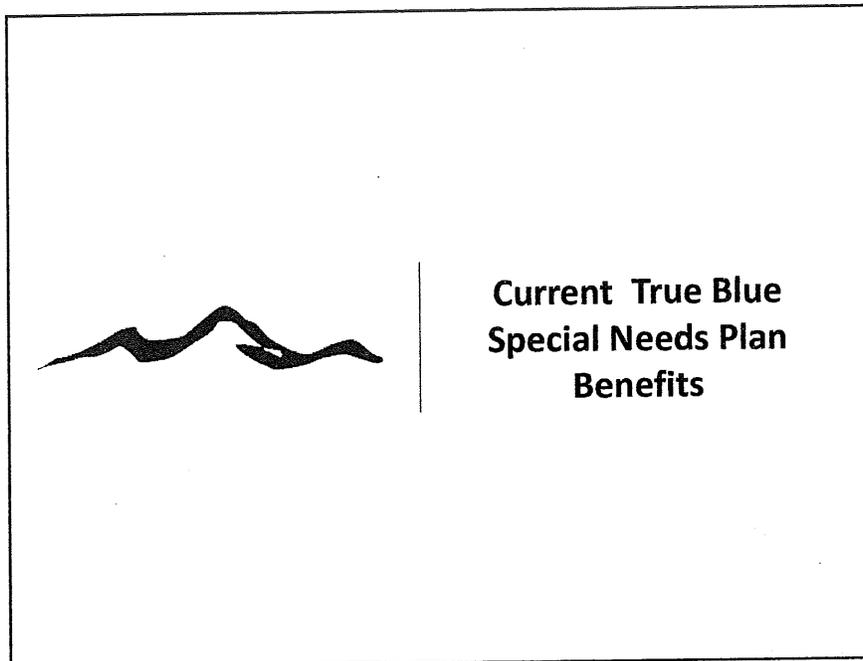
- The Centers of Medicare and Medicaid (CMS) require that all health plans go through an application process to become a Special Needs Plan – You must prove that you have the ability to serve members
- One of the most member centered components of the application process is the development of a Model of Care
- The Model of Care defines the management, procedures and operational systems that provide access, coordination and the structure needed to provide services and care to the members



**Blue Cross of Idaho's (BCI) Special Needs Plan Model of
Care has the following goals**

- Improving access to medical, behavioral health, and social services
- Delivering the right care, in the right place at the right time
- Enhancing coordination of care through an identified point of contact
- Optimizing the health and wellbeing of members through:
 - Increasing attention to transitions of care across healthcare settings and providers
 - Improving communication between care providers
 - Raising awareness of preventive health services
 - Supporting appropriate utilization of services
 - Assuring cost-effective service delivery



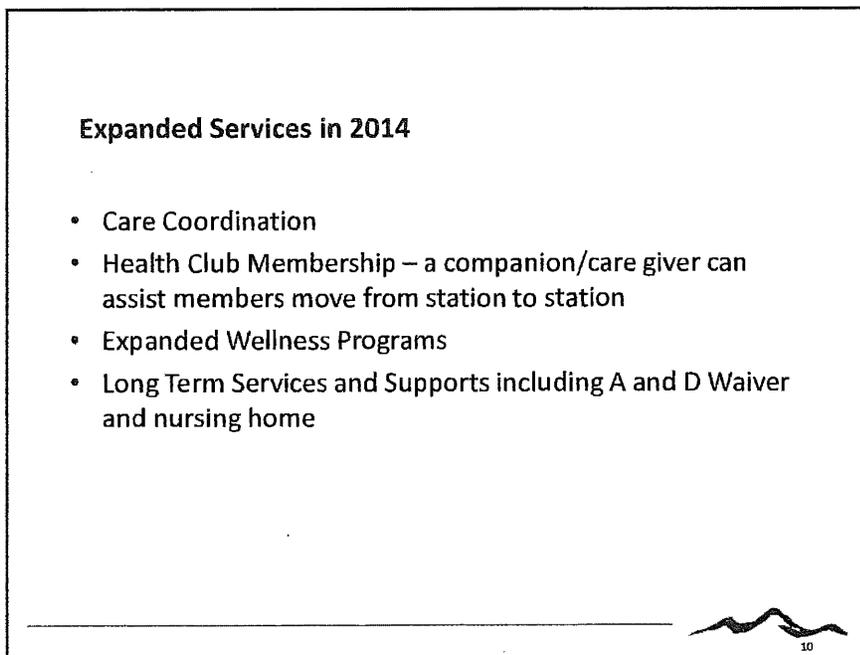
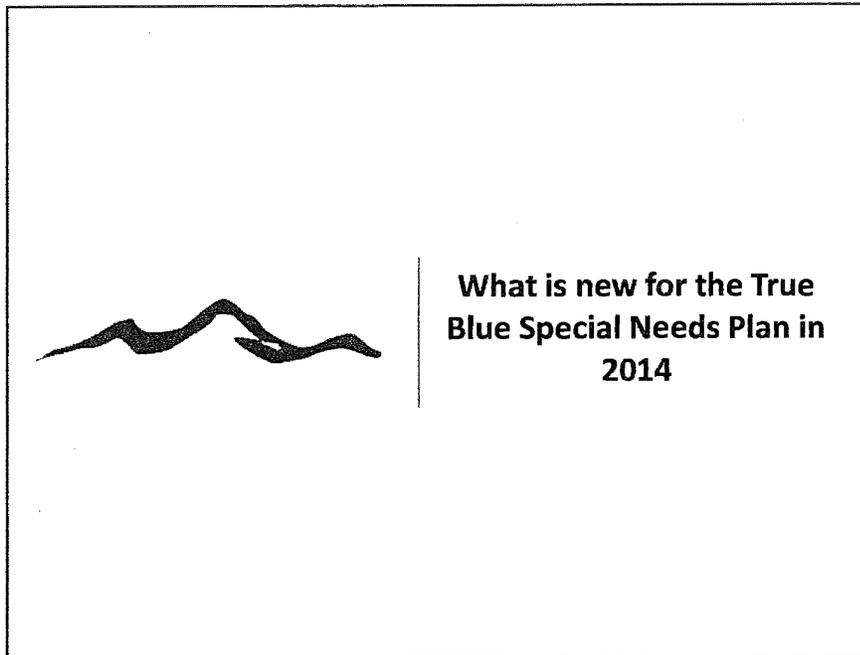


True Blue Special Needs Plan Benefit Summary

- All Medicare and state designated Medicaid Services covered
- \$0 Premium
- \$0 Part D Deductible
- \$0 Copay for services
- Rx copay based on income and institutional status
- Dental – preventive, restorative, dentures (with limits)
- Vision - one pair glasses/contacts after cataract surgery, plus routine benefit yearly – eye exam plus \$100 for eyewear
- Customer Service Line
- 24 hour Nurseline
- Multiple care management programs to meet service need of members with special needs or conditions



8



The Job of a Care Coordinator

- The Care Coordinators role is person-centered, assessment based, with an interdisciplinary approach to integrating health care and social support services cost-effectively in which:
 - A member’s needs and preferences are assessed,
 - A comprehensive care plan is developed,
 - Services are managed and monitored through on-going contact, and
 - Communication with the member’s care team is required



Waiver Services to be added in 2014

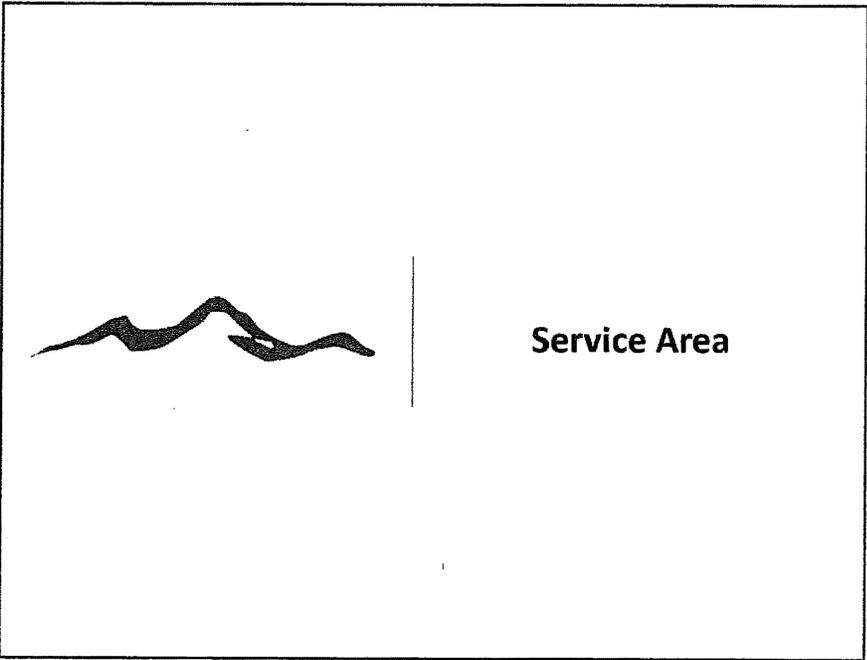
- | | |
|----------------------------|-----------------------------|
| • Adult Day Health | • Environmental |
| • Day Habilitation | • Accessibility Adaptations |
| • Homemaker | • Home Delivered Meals |
| • Residential Habilitation | • Non-medical |
| • Respite | • Transportation |
| • Attendant Care | • Personal Emergency |
| • Adult Residential Care | • Response System |
| • Chore Services | • Skilled Nursing |
| • Companion Services | • Specialized Medical |
| • Consultation | • Equipment and Supplies |
| • Expanded Dental Services | • Supported Employment |

Although not a Waiver Service, Targeted Service Coordination will be added in 2014 for members receiving DD Waiver Services.

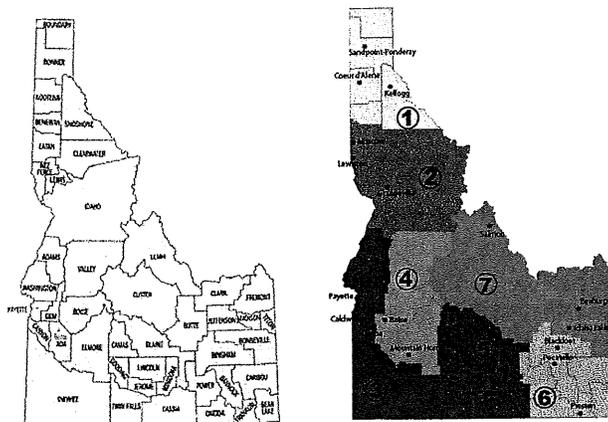


The Advantages of Combining Home and Community Based Services to the True Blue Special Needs Plan

- Increased coordination for whole person care considering all services
- Health Plan UAI assessors to communicate with Care Coordinators directly improving coordination
- Planned processes to address the ups and downs of service needs
- Responsibly coordinate care
- Dollars into a larger pool may give greater management opportunity
- Statewide consistency of Waiver protocol/policy
- Attention to provider credentialing and quality assurance
- Health plan case management resources
- Attention to health care affordability
 - The blending of the physical health and home care can help maximize health improvement opportunities



Approximately 20,000 eligibles in 33 counties of True Blue (HMO SNP)
Ada, Adams, Bannock, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Canyon, Caribou, Cassia, Clark, Elmore, Fremont, Gem, Gooding, Jefferson, Jerome, Kootenai, Latah, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Twin Falls, Valley and Washington



For more information:

www.MedicaidLTManagedCare.dhw.idaho.gov

www.bcidaho.com/medicare



Frequently Asked Questions by Potential Members
Blue Cross of Idaho True Blue Special Needs Plan
Updated December 2013

1. What is True Blue?

Blue Cross of Idaho is proud to offer the True Blue Special Needs Plan (SNP). True Blue SNP provides coverage for Medicare A, B and D. Medicaid services such as long term services and supports (A and D waiver services) are expected to be added sometime in 2014. We designed True Blue SNP to address members' specific needs, and to provide members their own Care Coordinator to serve as a central point of contact.

2. Do I need to live in a certain part of the state?

True Blue SNP is available in Ada, Adams, Bannock, Benewah, Bingham, Blaine, Boise, Bonner, Bonneville, Boundary, Canyon, Caribou, Cassia, Clark, Elmore, Fremont, Gem, Gooding, Jefferson, Jerome, Kootenai, Latah, Madison, Minidoka, Nez Perce, Oneida, Owyhee, Payette, Power, Shoshone, Twin Falls, Valley, and Washington counties. You must live in one of these areas to join the Plan.

3. What does True Blue cover?

True Blue SNP covers all medically-necessary and preventive services covered under **Medicare** Part A and Part B and prescription drug coverage under Part D as well as additional services covered by **Medicaid**. True Blue SNP also covers *additional services over and above* original Medicare/Medicaid, such as:

- Care Coordination
- Dental
- Vision
- Call-in 24 Hour Nurseline
- Fitness Benefit

4. How do I qualify for True Blue coverage?

To be eligible for True Blue SNP, enrollees must be at least 21 years old and enrolled in the State of Idaho Medicaid program. The enrollee must also be eligible for Medicare Part A, enrolled in Medicare Part B, and reside in the SNP service area (see #2 above).

5. How do I know if my doctors are in the True Blue provider network?

Blue Cross of Idaho knows how important it is to see your doctor. That's why True Blue SNP formed a State-wide network of doctors, dentists, specialists, and hospitals. For provider information, or to help locate your doctor or specialist, call Blue Cross of Idaho Customer service number at 1-888-492-2583. You can also use our website bcidaho.com/medicare to locate your doctor.

6. What happens if my doctors are not in the network?

Members can work with their Care Coordinators to find a provider within the True Blue network and develop a transition plan. Most providers are in Blue Cross of Idaho's True Blue Network. If

you choose to go to a doctor outside of the network without a transition plan, you must pay for these services yourself.

7. How much will it cost me to join and get services with True Blue SNP?

There is no cost to join. Network provided services and coverage are also provided at no cost to you. Members must maintain their eligibility for Medicaid in the State of Idaho, be entitled to Medicare Part A, and enrolled in Medicare Part B.

(Note: The fitness benefit requires a yearly cost-share)

8. What is a Care Coordinator?

A Care Coordinator serves as the member's central point of contact. Care Coordinators ensure a member receives the right care and information, while working directly with the member's family and healthcare provider. Care Coordinators are an essential part of the member's Care Team, a small group made up of the member, a designated family member, and physician.

9. How can I benefit from a Care Coordinator?

Care Coordinators work with you, your family and physician to ensure your healthcare needs are met in a timely, professional manner. Care Coordinators can also link you to community-based services, find specialists, and provide information on chronic health concerns, preventing illnesses and accidents, and trips to the doctor.

10. What if I don't like True Blue?

While we are confident that you will be very satisfied with the True Blue SNP coverage, members can disenroll or enroll from True Blue SNP on a monthly basis.

11. Can I receive information in my primary language?

True Blue SNP provides interpreter services for those enrollees who do not speak English.

12. What coverage is provided for prescription drugs?

True Blue SNP covers a full range of Part D Prescription medications as well as the full array of medications covered by Medicaid including over the counter drugs. Complete coverage information can be found by calling the Blue Cross of Idaho Customer service number or on the Blue Cross of Idaho website.

13. Where can I find more information and stay up-to-date on this plan?

More True Blue SNP information can be obtained from the Blue Cross of Idaho website bcidaho.com/medicare. Interested parties may also call and speak to a Blue Cross Customer Representative a 1-888-492-2583.

Attachment 3

Community Care Advisory Council Membership Information

	Position	Member	Position Type	Organization	Length of Term	Term Expiration
1	DHW Director's Rep	Tamara Prisock	appointed by IDHW	IDHW	n/a	n/a
2	State Ombudsman	Cathy Hart	appointed by IDHW	Commission on Aging	n/a	n/a
3	Director, State Protection/Advocacy Rep	Angela Eandi	appointed by DRI	DisAbility Rights Idaho	n/a	n/a
4	Director, Developmental Disabilities Council	Christine Pisani	appointed by IDHW	DD Council	n/a	n/a
5	IHCA-ICAL Executive Director	Robert Vande Merwe	appointed by IHCA	IHCA-ICAL	n/a	n/a
6	IHCA-ICAL RALF Administrator	Brett Waters	appointed by IHCA	New Beginnings	3 years	January 2015
7	IHCA-ICAL RALF Administrator	Bryan Elliott	appointed by IHCA	Willow Park	3 years	January 2017
8	IHCA-ICAL RALF Administrator		appointed by IHCA		3 years	January 2017
9	RALF Administrator At-Large	Keith Fletcher	appointed by IDHW	Ashley Manor	3 years	January 2016
10	RALF Administrator At-Large	Scott Burpee	appointed by IDHW	Safe Haven Healthcare	3 years	January 2015
11	AARP Representative	Cathy McDougall	appointed by AARP	AARP	3 years	January 2015
12	Advocate for Mentally Ill Clients	Kathie Garrett	elected by Council		3 years	January 2015
13	CFH Provider/Resident or Family Member	Sharol Aranda	elected by Council		3 years	January 2016
14	CFH Provider	Eva Blecha	elected by Council		3 years	January 2015
15	CFH Provider	Pam Estes	elected by Council		3 years	January 2015
16	CFH Provider	Mary Blacker	elected by Council		3 years	January 2016
17	CFH Provider	John Chambers	elected by Council		3 years	January 2017
18	Resident/Family Member - RALF	Elishia Smith	elected by Council	Trinity Assisted Living	3 years	January 2017
19	Resident/Family Member - RALF	Gloria Keathley	elected by Council		3 years	January 2015
20	Resident/Family Member - CFH	Leroy Smith	elected by Council		3 years	January 2016
revised: October 29, 2013						

Attachment 4

CONFIDENTIALITY STATEMENT

This bill draft contains confidential and privileged information exempt from disclosure under Section 9-340F(1), Idaho Code. If you have received this message by mistake, please notify us immediately by replying to this message or telephoning the Legislative Services Office at (208) 334-2475.

DRAFT

DRMPN154

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature Second Regular Session - 2014

IN THE _____

BILL NO. _____

BY _____

1 AN ACT
2 RELATING TO; AMENDING SECTION 39-3322, IDAHO CODE,

3 Be It Enacted by the Legislature of the State of Idaho:

4 SECTION 1. That Section 39-3322, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 39-3322. QUALIFICATIONS AND REQUIREMENTS FOR FACILITY STAFF. (1) Each
7 facility must employ or arrange for sufficient trained staff to fully meet
8 the needs of its residents and the requirements of this chapter. The facil-
9 ity shall have sufficient staff to provide care during all hours required in
10 each resident's negotiated service plan. Additional staff may be required
11 if physical plant and disability of residents indicate that staff assistance
12 in emergencies is required. Benchmarks shall be established in the assess-
13 ment criteria where the need for certified nursing assistants or licensed
14 nurses is indicated. Residential care or assisted living facilities shall
15 not retain residents who require the care provided by nursing facilities
16 under section 39-1301(b), Idaho Code, other than for short exceptional
17 stays pursuant to negotiated rulemaking as defined in chapter 52, title
18 67, Idaho Code. All staff must have a suitable background check completed
19 prior to working with residents. The council shall define what constitutes
20 a suitable background check. Medicaid criminal background checks shall be
21 required as applicable.

22 (2) Should a residential care or assisted living facility choose not
23 to carry professional liability insurance, that information shall be dis-
24 closed, in writing, to employees at the time of hiring.

DRAFT

DRMPN155

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature Second Regular Session - 2014

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO; AMENDING SECTION 39-3303, IDAHO CODE,

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-3303, Idaho Code, be, and the same is hereby amended to read as follows:

39-3303. PAYMENT LEVELS. (1) Clients of the department who are receiving financial aid as set out in sections 56-207, 56-208, and 56-209a, and 56-255 Idaho Code, seeking placement in a residential care or assisted living facility will be assessed by the ~~department~~ administrator as provided in section 39-3308, Idaho Code, regarding their need for specific types of services and supports. This assessment will determine the reimbursement rate to the service provider as well as minimum staffing ratios by facility size, which shall be the minimum rate for any Medicaid residents in the facility. Reimbursement formulas for sixteen (16) bed or less facilities and sixteen (16) bed or less units on a multi-unit campus shall pay for services not requiring a professional license at the personal assistant or attendant care rate. Rates for residents on a state plan PCS level 4 shall be paid at the minimum number of hours allowed under the plan for all size facilities.

Eligible participants must be allowed to choose the facility or services that are appropriate to meet their medical needs and financial ability to pay. The department shall promulgate rules outlining the payment policy and calculations for clients of the department through negotiated rulemaking.

(2) Residents who are not clients of the department shall:

(a) Be assessed by the facility regarding their need for specific types of services and supports. This assessment, and the individual negotiated service agreement, shall determine the rate charged to the resident.

(b) Receive a full description of services provided by the facility and associated costs upon admission, according to facility policies and procedures. A thirty (30) day notice must be provided prior to a change in facility billing practices or policies. Billing practices shall be transparent and understandable.

(c) Be charged for the use of furnishings, equipment, supplies and basic services as agreed upon in the negotiated service agreement or as identified in the admission agreement.

DRAFT

DRMPN156

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature Second Regular Session - 2014

IN THE _____

BILL NO. _____

BY _____

1 AN ACT
2 RELATING TO; AMENDING SECTION 39-3321, IDAHO CODE,

3 Be It Enacted by the Legislature of the State of Idaho:

4 SECTION 1. That Section 39-3321, Idaho Code, be, and the same is hereby
5 amended to read as follows:

6 39-3321. QUALIFICATIONS AND REQUIREMENTS OF ADMINISTRATOR. Each res-
7 idential care or assisted living facility must employ at least one (1) admin-
8 istrator licensed by the bureau of occupational licensing, which is respon-
9 sible for licensing residential care facility administrators for the state
10 of Idaho. Multiple facilities under one (1) administrator ~~may shall~~ be al-
11 lowed by the department ~~based on an approved plan of operation~~. An adminis-
12 trator shall be allowed to oversee up to four (4) qualified house managers of
13 a small facility which is defined as sixteen (16) bed or less. The department
14 shall promulgate applicable rules, through negotiated rulemaking with the
15 council, to define a qualified house manager. Operating a nursing facility
16 and an attached assisted living shall not be deemed operating two (2) build-
17 ings with one (1) license.

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DRMPN157

LEGISLATURE OF THE STATE OF IDAHO
Sixty-second Legislature Second Regular Session - 2014

IN THE _____

BILL NO. _____

BY _____

AN ACT

1 RELATING TO; AMENDING SECTION 39-3302, IDAHO CODE, AMENDING SECTION
2 39-3308, IDAHO CODE,
3

4 Be It Enacted by the Legislature of the State of Idaho:

5 SECTION 1. That Section 39-3302, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 39-3302. DEFINITIONS. As used in this chapter:

8 (1) "Abuse" means a nonaccidental act of sexual, physical or mental
9 mistreatment or injury of a resident through the action or inaction of an-
10 other individual.

11 (2) "Activities of daily living" means the performance of basic self-
12 care activities in meeting an individual's needs to sustain him in a daily
13 living environment.

14 (3) "Administrator" means an individual, properly licensed by the bu-
15 reau of occupational licensing, who is responsible for day-to-day operation
16 of a residential care or assisted living facility.

17 (4) "Adult" means a person who has attained the age of eighteen (18)
18 years.

19 (5) "Advocate" means an authorized or designated representative of a
20 program or organization operating under federal or state mandate to repre-
21 sent the interests of mentally ill, developmentally disabled, or elderly
22 residents.

23 (6) "Assessment" means the conclusion reached using uniform criteria
24 which identifies residential care or assisted living resident strengths,
25 weaknesses, risks and needs, to include functional, medical, social and
26 behavioral needs. ~~The assessment criteria~~ A new and complete set of uniform
27 assessment criteria shall be developed by the department and residential
28 care or assisted living council so that the assessment is ready for review by
29 the 2015 Legislature. This uniform assessment criteria shall be the assess-
30 ment provided for in section 39-3308, Idaho Code. shall be developed by the
31 department and residential care or assisted living council.

32 (7) "Authorized provider" in this chapter means an individual who is a
33 nurse practitioner or clinical nurse specialist or a physician assistant.

34 (8) "Board" means the board of health and welfare.

35 (9) "Chemical restraint" means a medication used to control behavior
36 or to restrict freedom of movement and is not a standard treatment for the
37 resident's condition.

38 (10) "Core issues" means abuse, neglect, exploitation, inadequate
39 care, a situation in which the facility has operated for more than thirty
40 (30) days without a licensed administrator designated the responsibility
41 for the day-to-day operations of the facility, inoperable fire detection or

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DRMPN157

2

1 extinguishing systems with no fire watch in place pending the correction of
2 the system, and surveyors denied access to records, residents or facilities.

3 (11) "Department" means the Idaho department of health and welfare.

4 (12) "Director" means the director of the Idaho department of health and
5 welfare.

6 (13) "Exploitation" means the misuse of a resident's funds, property,
7 resources, identity or person for profit or advantage.

8 (14) "Facility" means a residential care or assisted living facility.

9 (15) "Governmental unit" means the state, any county, any city, other
10 political subdivision, or any department, division, board, or other agency
11 thereof.

12 (16) "Inadequate care" occurs when a facility fails to provide the ser-
13 vices required to meet the terms of the negotiated service agreement or pro-
14 vide for room, board, activities of daily living, supervision, first aid,
15 assistance and monitoring of medications, emergency intervention, coordi-
16 nation of outside services, a safe living environment; or engages in viola-
17 tions of resident's rights, or takes residents who have been admitted in vio-
18 lation of the provisions of section 39-3307, Idaho Code.

19 (17) "License" means a basic permit to operate a residential care or as-
20 sisted living facility.

21 (18) "Licensee" means the owner of a license to operate a residential
22 care or assisted living facility under this chapter.

23 (19) "Licensing agency" means the unit of the department of health and
24 welfare that conducts inspections and surveys and issues licenses based on
25 compliance with this chapter.

26 (20) "Neglect" means failure to provide food, clothing, shelter, or
27 medical care necessary to sustain the life and health of a resident.

28 (21) "Negotiated service agreement" means the agreement reached by the
29 resident and/or their representative and the facility, based on the assess-
30 ment, physician's orders, admission records, and desires of the resident,
31 and which outlines services to be provided and the obligations of the facil-
32 ity and the resident.

33 (22) "Personal assistance" means the provision by the staff of the fa-
34 cility of one (1) or more of the following services:

35 (a) Assisting the resident with activities of daily living.

36 (b) Arranging for supportive services.

37 (c) Being aware of the resident's general whereabouts.

38 (d) Monitoring the activities of the resident while on the premises of
39 the facility to ensure the resident's health, safety and well-being.

40 (23) "Political subdivision" means a city or county.

41 (24) "Resident" means an adult who lives in a residential care or as-
42 sisted living facility.

43 (25) "Residential care or assisted living facility" means a facility or
44 residence, however named, operated on either a profit or nonprofit basis for
45 the purpose of providing necessary supervision, personal assistance, meals
46 and lodging to three (3) or more adults not related to the owner.

47 (26) "Room and board" means lodging and meals.

48 (27) "Substantial compliance" means a facility has no core issue defi-
49 ciencies.

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3

1 (28) "Supervision" means administrative activity which provides the
2 following: protection, guidance, knowledge of the resident's general
3 whereabouts, and assistance with activities of daily living. The adminis-
4 trator is responsible for providing appropriate supervision based on each
5 resident's negotiated service agreement or other legal requirements.

6 (29) "Supportive services" means the specific services that are pro-
7 vided to the resident in the community.

8 SECTION 2. That Section 39-3308, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 39-3308. ASSESSMENT. The ~~department~~ administrator of each facility
11 shall employ uniform assessment criteria as provided for in sections 39-3301
12 and 39-3302(6), Idaho Code, to assess functional, and cognitive, behavioral
13 and social needs of each resident disability. The conclusions shall be
14 deemed the assessment and shall be used to provide appropriate placement and
15 Medicaid funding for for eligible residents for service needs and regula-
16 tory requirements. The assessment shall also be used to ensure funding is
17 cost-effective and appropriate when compared to other state programs rele-
18 vant to the needs of the client being assessed. The department shall develop
19 a new and complete set of rules , through negotiated rulemaking, regarding:

20 (1) Qualifications of persons making the assessments.

21 (2) Department's responsibility for reviewing facility prepared as-
22 sessments for state pay clients.

23 (3) Time frames for completing an assessment.

24 (4) Information to be included in an assessment.

25 (5) Use of an assessment in developing the negotiated service agree-
26 ment.

27 (6) Use of assessments in determining facility staffing ratios.

28 (7) Use of assessments for determining the ability of provider and fa-
29 cility to meet residents' needs and special training or licenses that may be
30 required in caring for certain residents.

31 These rules shall be developed so that they are ready for review by the
32 2015 Legislature.

Attachment 5



Report to Community Care Advisory Council
January 28, 2014

Policy for Shared Administrators in Assisted Living Facilities

Current Proposal from CCAC Members:

- Leave shared administrator decision as a variance to the existing requirement
- Require the plan of operation to include the establishment of a house manager in each facility sharing an administrator. House Manager must complete Administrator boot camp and the Department's six on-line courses.
- Revocation of the variance would occur if the facility is found to have 2 core issues in regular survey or complaint investigation.

Questions for Discussion:

- How does the quality of care (in terms of survey results and complaints) compare for those facilities who do not share administrators and those who do?
- Should turnover of administrators be a consideration in allowing facilities to share administrators?
- How does a facility transition from any current approved variance to the new policy?
- Are there any parameters concerning the facilities who can share administrators? For example, should only facilities under a certain number of beds be allowed to share administrators?
- What would IHCA's training for house managers look like?

Timeline for Developing and Implementing Rules/Policy

Action	Target Date
Solicit input from Assisted Living Providers	Completed 1/15/2014
Compile and examine survey data for facilities who have or are now sharing administrators	2/7/2014
Collect/compile input from providers	2/7/2014
Discuss CCAC member proposal and discussion questions at CCAC meeting	1/28/2014
Define requirements for House Manager	
Draft rule/policy change	
CCAC review of rule/policy change	
Review of draft rule/policy change by other providers/stakeholders	
Publish rule change (we will try to publish as temporary/proposed with an effective date of 6/1/2014)	June or July Administrative Bulletin
If rule change publishes as a temporary/proposed rule, implement rule change and discontinue using the variance process	6/1/2014
If rule change publishes as proposed, implement the rule change and discontinue using the variance process	Sine Die of 2015 Legislative Session or 7/1/2015

Attachment 6

Draft

IDAPA 16.03.22

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Criminal History and Background Check. A residential care or assisted living facility must complete a criminal history and background check on employees and contractors hired or contracted with after October 1, 2007, who have direct patient access to residents in the residential care or assisted living facility. The Department check conducted under IDAPA 16.05.06, "Criminal History and Background Checks," satisfies this requirement. Other criminal history and background checks may be acceptable provided they meet the criteria in Subsection 009.02 of this rule and the entity conducting the check issues written findings. The entity must provide a copy of these written findings to both the facility and the employee. (3-26-08)

02. Scope of a Criminal History and Background Check. The criminal history and background check must, at a minimum, be fingerprint-based and include a search of the following record sources: (3-26-08)

- a. Federal Bureau of Investigation (FBI); (3-26-08)
- b. Idaho State Police Bureau of Criminal Identification; (3-26-08)
- c. Sexual Offender Registry; (3-26-08)
- d. Office of Inspector General List of Excluded Individuals and Entities; and (3-26-08)
- e. Nurse Aide Registry. (3-26-08)

03. Availability to Work. Any direct patient access individual hired or contracted with on or after October 1, 2007, must self-disclose all arrests and convictions before having access to residents. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, the individual cannot have access to any resident. The individual is allowed to only work under supervision until the required criminal history and background check is completed unless the individual has completed one of the following alternative criminal history and background checks and the facility has determined there is no potential danger to residents. (Effective Date).

- a. <Type of background check>
- b. <Type of background check>
- c. <Type of background check>
- d. <Type of background check>

04. Submission of Fingerprints. The individual's fingerprints must be submitted to the entity conducting the criminal history and background check within twenty-one (21) days of his date of hire. (3-26-08)

05. New Criminal History and Background Check. An individual must have a criminal history and background check when: (3-26-08)

a. Accepting employment with a new employer; and (3-26-08)

b. His last criminal history and background check was completed more than three (3) years prior to his date of hire. (3-26-08)

06. Use of Previous Criminal History and Background Check. Any employer may use a previous criminal history and background check obtained under these rules if: (3-26-08)

a. The individual has received a criminal history and background check within three (3) years of his date of hire; (3-26-08)

b. The employer has documentation of the criminal history and background check findings; (3-26-08)

c. The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification; and (3-26-08)

d. No disqualifying crimes are found. (3-26-08)

07. Employer Discretion. The new employer, at its discretion, may require an individual to complete a criminal history and background check at any time, even if the individual has received a criminal history and background check within three (3) years of his date of hire.

Report to Community Care Advisory Council

January 28, 2014

Criminal History Requirement for New Employees of Facilities

Timeline for Developing and Implementing Changes

Action	Target Date
Review Draft Rule Change with CCAC	1/28/2014
Finalize content of rule change	2/28/2014
Implement new requirement using the variance process	3/1/2014
Publish rule change (we will try to publish as temporary/proposed with an effective date of 6/1/2014)	June or July Administrative Bulletin
If rule change publishes as a temporary/proposed rule, implement rule change and discontinue using the variance process	6/1/2014
If rule change publishes as proposed, implement the rule change and discontinue using the variance process	Sine Die of 2015 Legislative Session or 7/1/2015

Attachment 7

CERTIFIED FAMILY HOMES

170. ELEMENTS OF CARE. As a condition of certification, the home must provide each of the following to the resident without additional charge. (4-11-06)

05. Plan of Service. Development and implementation of the plan of service for private-pay residents and implementation of the plan of service for state-funded residents. (4-11-06)

250. PLAN OF SERVICE. The resident must have a plan of service. The plan must identify the resident, describe the services to be provided, and describe how the services will be delivered. (4-11-06)

02. Signature and Approval. The provider and the resident, his legal guardian or his conservator must sign and date the plan of service upon its completion, within fourteen (14) days after the resident's admission. For homes serving state-funded residents, services must be authorized by the Department prior to admission. (4-11-06)

225. UNIFORM ASSESSMENT REQUIREMENTS.

01. State Responsibility for State-Funded Residents. The Department will assess State-funded residents according to IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients." (4-11-06)

RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES

219. REQUIREMENTS FOR ADMISSION AGREEMENTS FOR DEPARTMENT CLIENTS.

01. Initial Resident Assessment. Prior to or on the day of admission each resident must be assessed by the facility to ensure the resident is appropriate for placement in a residential care or assisted living facility. (3-29-10)

02. Interim Care Plan. The facility must develop an interim care plan to guide services until the Department's assessment outlined in Section 660 of these rules is complete. The Department will complete a resident assessment within twelve (12) business days of receiving notification that the participant is financially eligible for waiver services. The result of the assessment will determine the need for specific services and supports and establish the reimbursement rate for those services. (3-29-10)

03. Written Agreement. The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement in Section 320 of these rules are met. (3-29-10)

660. REQUIREMENTS FOR UNIFORM ASSESSMENT CRITERIA FOR DEPARTMENT CLIENTS.

Department clients will be assessed by the Department in compliance with IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients." (3-30-06)

Attachment 8

COMMUNITY CARE ADVISORY COUNCIL

ANNUAL REPORT TO THE IDAHO LEGISLATURE

FOR CALENDAR YEAR 2013

The Community Care Advisory Council was formed by statutes (Idaho Code §39-3330, §39-3331, §39-3332, §39-3333, and §39-3511) passed in the 2005 legislative session. The statutes combine the former Board and Care Advisory Council and the Residential Care Council for the Elderly into a single entity of 20 members appointed by the organizations and/or agencies represented on the Council. Its chair, Robert Vande Merwe of the Idaho Health Care Association, was elected from the council members at its December 2011 meeting.

The Council is a forum for stakeholders in Residential Care or Assisted Living Facilities (RALFs) and Certified Family Homes (CFHs). These programs strive to provide a safe, home-like environment for their residents. Stakeholders consist of providers, residents or resident family members, advocates, and Idaho Department of Health & Welfare staff.

The Purpose of the Council is as follows:

1. To make policy recommendations regarding the coordination of licensing and enforcement standards in residential care or assisted living facilities and the provision of services to residents of residential care or assisted living facilities.
2. To advise the agency during development and revision of rules.
3. To review and comment upon any proposed rules pertaining to residential care or assisted living.
4. To submit an annual report to the legislature stating opinions and recommendations which would further the state's capability in addressing residential care or assisted living facility issues.

The Council met in 2013 on January 29th, April 30th, July 30^h, and October 29th.

The schedule of meetings for 2014 is January 28th, April 29th, July 29th, and October 28th. The Council welcomes and encourages the attendance and input of guests, especially members of the Idaho legislature.

Significant motions, accomplishments, and decisions made during the 2012 calendar year are as follows:

- Membership. Kathie Garrett and Leroy Smith joined the Council. Keith Fletcher, Sharol Aranda, Mary Blacker, Elishia Smith, and John Chambers agreed to serve another term.
- IHCA-ICAL Proposed Legislation. The Council recommended consideration by the Department of IHCA-ICAL proposed legislation and encouraged the Department to endorse the same.
- Criminal History Background Checks. Suggested possible solutions to decrease delays in the Department's fingerprinting appointments.

- Meeting Format. The Council piloted a new meeting format, but after the pilot decided to revert to its traditional format.
- Unsubstantiated Complaints. The Council requested that the Department remove unsubstantiated complaints regarding RALF providers from its website.

Significant unresolved or open issues are as follows:

- Placements for Clients with Behaviors. The Council appointed a subcommittee that continues to meet with representatives from the Department to find placement solutions for RALF residents who pose a threat to themselves or others.

Enclosures:

1. Correspondence Regarding Criminal History Background Clearance
2. RALF Statistics
3. CFH Statistics
4. Department Update on Council Items

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Attachment 1

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Community Care Advisory Council

Established in Idaho Code
Title 39, Chapters 33 and 35

ROBERT VANDE MERWE, CHAIR

c/o Steven L. Millward
Council Coordinator
Licensing & Certification—DHW
P.O. Box 83720
Boise, ID 83720-0009
(208) 364-1959

January 4, 2013

Mr. David Taylor
Deputy Director
Idaho Department of Health & Welfare
P.O. Box 83720
Boise, ID 83720-0036

Dear Mr. Taylor:

As vice chair of the Community Care Advisory Council (CCAC), I have been asked to write you about concerns that residential care or assisted living facility (RALF) providers have over frequent delays in completion of criminal history background checks for direct care staff. At times, it is not possible to schedule a fingerprinting appointment through the Department for newly hired staff before the timeframe expires for them to have it done, resulting in these newly hired employees being disallowed to work.

This barrier has caused some employees to seek work elsewhere. Given the labor pool we have to draw from, they have other job opportunities that do not require fingerprinting or delays in earning an income. This creates additional fiscal and recruiting challenges for us in the already challenging environment that we operate in.

I have discussed this issue with Steve Bellomy, who oversees the Criminal History Unit (CHU), and he was very helpful. By way of action steps, the CCAC would like to suggest the following:

- 1) Have a section on the Department's RALF website pointing out some of the things providers can do to prevent delays, like making the appointments for the recruits, and insuring the recruits follow through with the appointment.
- 2) Allow for walk-ins. When the CHU has a no-show for a fingerprinting appointment, they can increase productivity by filling the void with a walk-in.
- 3) We are convinced that Steve Bellomy is doing the best he can with the limited resources available to the CHU, but it is becoming obvious that the demand is overwhelming the system from time to time. We are requesting that the Department consider increasing the assigned full time employees for this unit to avoid having providers miss the criminal history clearance deadlines imposed by rule.
- 4) Finally, we as providers, consumers, and advocates, strongly support a robust criminal history background screening process. However, when we embraced these requirement

Mr. David Taylor
January 4, 2013
Page 2 of 2

years ago, at the time we had no idea that the deadlines would be so hard to meet. We really need more staff on this, but if that is not possible, we would like the Department to formally relax the timeframe requirements to clear a criminal history background check. I understand that Steve Bellomy has done so informally, but that could come back to bite a provider who misunderstood what that meant.

Please let the CCAC know what can be done to ensure RALF providers can meet the deadlines for fingerprinting and thus avoid additional costs and recruiting hassles. Thank you for looking into this matter for us.

Sincerely,



SCOTT F. BURPEE
Vice Chair

SFB/slm

cc: Steve Bellomy, Chief, Bureau of Audits and Investigations

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IDAHO DEPARTMENT OF
HEALTH & WELFARE

C.L. "BUTCH" OTTER - GOVERNOR
RICHARD M. ARMSTRONG - DIRECTOR

OFFICE OF THE DIRECTOR
450 W. State Street, 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
PHONE 208-334-5500
FAX 208-334-6558

February 19, 2013

Scott F. Burpee
Vice Chair, Community Care Advisory Council (CCAC)
sburpee@safehavenhealthcare.org

Dear Mr. Burpee:

Thank you for giving me the opportunity to respond to your letter discussing your concerns with the Criminal History Unit. We use feedback such as yours to improve our business processes and practices. You can be assured that we are committed to delivering the best possible product to our stakeholders, and your input is valuable to us.

Please accept my sincere apology for the tardiness of my response to you. It is in no way intended to reflect on the importance of your concern to me; rather, I am seeking to balance the demands of the current legislative session with the daily workload.

I would like to address your concerns one at a time. The summer of 2012 was particularly challenging for the Criminal History Unit (CHU) because they faced staff shortages that affected their overall performance. Their staff levels were restored in the fall. Today, the unit performs at the same level as it did before; and, appointments are available at all of our locations well within the 21 calendar days required to complete the fingerprinting.

I agree that the more information we put within reach of our stakeholders, the better informed they will be. And, with more information at their disposal, RALF managers will be able to maximize background check appointment opportunities. We will partner with the Division of Licensing and Certification to provide more specific guidance regarding background checks in the RALF website. Basic background check program requirements are already available for review at the CHU website: <https://chu.dhw.idaho.gov>. Most RALF managers are already familiar with this website, and its capabilities at their disposal.

One of the adverse factors that prevents us from increasing our appointment availability is the applicant no-show rate. Since July 2012, the no-show rate for CHU appointments has remained steady at 20 percent. To counter this, we incorporated some changes to the website that included the use of text messaging technology to remind the applicant of his/her appointment one calendar day prior to the appointment. It remains to be seen whether this enhancement will render positive results. We constantly review no-show data to determine if further improvements are needed. Second, we certainly can re-evaluate the walk-in policy. Our principal concern when we restricted the handling of walk-ins was the safety of customers and our staff. Some of our waiting areas simply

Scott Burpee
February 19, 2013
Page 2 of 2

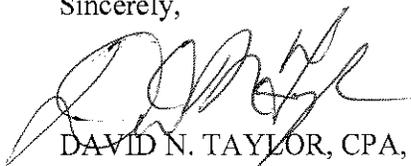
are not designed to accommodate large numbers of applicants. We believe that having large groups in our waiting areas does compromise their own safety as well as that of our employees. At this time, I would like to go back to the point I addressed before regarding no-shows: most of the missed opportunities are no-shows, not cancellations. Truly, we do not know that we have a vacancy until the appointment time is well past. In this context, the reality is that once a fingerprinting opportunity is not used, it is gone forever with no chance of making it up. With a large influx of unscheduled applicants, we cannot guarantee that everyone will be served, should they chose to stay and wait for someone else to be a no-show. We continue to rely on the applicants and their employers to do everything they can to help us not waste those appointment opportunities.

Third, increasing the number of employees for the CHU, as well as any expansion, requires careful planning and more importantly, funding. By statute, the CHU must collect fees for services rendered. Inevitably, expanding the CHU would translate into increased fees for the background check to support increases in personnel, equipment, and operating costs. We are not certain there would be enthusiasm or acceptance in the provider community to absorb an increase of the background check fee, even though providers are not required to pay for the background check. Additionally, we continue to look for opportunities to make our schedules more flexible. In high demand areas, we have shortened our appointment length so we can literally put more appointments on the table for applicants to utilize. And, we are looking at alternative staffing arrangements to handle future growth.

Finally, we are open to consider increasing the time allotted to collect fingerprints for this program. We all must be careful in determining whether the increased risk to your agencies' clients outweighs the benefit of increasing the availability of appointments for your recruit pool. Please understand, there is no specific time limit as to when a person clears the Department's background check. The CHU only requires fingerprints must be collected not later than 21 calendar days from the time the application for the background check is signed and notarized by the applicant. Other Department program rules impose more stringent requirements as to the availability of applicants for employment. Those programs would have to change their requirements to meet your needs as well.

I appreciate you taking the time to thoughtfully present the challenges you have experienced with the CHU and background checks for prospective employees, as well as suggesting improvements. If there are further concerns regarding the Criminal History Unit, please contact Steve Bellomy, Bureau Chief, Bureau of Audits and Investigations, at (208) 334-0609.

Sincerely,



DAVID N. TAYLOR, CPA, CFE
Deputy Director

c: Steve Bellomy, Chief, Bureau of Audits and Investigations
Tamara Prisock, Administrator, Division of Licensing and Certification

Attachment 2

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RALF Report to CCAC Calendar Year 2012

Surveys Completed

Year	2007	2008	2009	2010	2011	2012
Number of Licensed Beds	7269	7583	8413	8560	8809	8851
Number of Buildings	304	319	333	343	349	348
Surveys Completed						
Initial Surveys	20	40	46	12	13	14
Licensure Surveys (Annual)	42	45	96	97	119	76
Follow-up Surveys	36	32	39	45	44	36
Complaint Investigations	121	163	177	135	171	170
Total Surveys Completed	219	280	358	289	348	296
FTE	10	10	10	8.5	9.5	10

Most Common Deficiencies

Core Deficiencies	Times Cited
Inadequate Care Acceptable Admission/Retention (12) Resident Rights (5) Safe Living Environment (5) Supervision (4) Assistance and Monitoring of Medications (4) Coordination of Outside Services (3) Emergency Intervention (2)	30
No Administrator for more than 30 days	6
Abuse	13
Neglect	5
Exploitation	5
Surveyors Denied Access	1

	Non-Core (Punch List) Deficiencies	Times Cited
16.03.22.410.02	Fire Drills	49
16.03.22.220.02	Admission Agreement	34
16.03.22.404.01	Fire Life Safety Requirements	34
16.03.22.415.01	Maintenance of systems for Fire and Life Safety	32
16.03.22.415.02	Fuel Fired Heating inspected/cleaned Annually	30
16.03.22.350.02	Investigation of incidents, accidents and complaints	30
16.03.22.300.01	RN assessment @ change of condition and 90 days	29
16.03.22.305.02	Current medication orders	28
16.03.22.320.01	Negotiated Service Agreement	26
16.03.22.405.05	Fire Alarm/smoke detector system	25
16.03.22.300.02	Licensed nurse available	25
16.03.22.009.06.c	Background checks	25

Enforcement Actions

Enforcement Actions	2011	2012:
Provisional License:	8	13
Required Consultant:	7	5
Civil Monetary Penalties:	4	18
Ban on Admissions:	4	7
Revocation	0	4
Summary Suspension	1	1
Temporary Management	0	1

Reportable Incidents

Reportable Incidents	2010	2011	2012
Falls	525	672	662
Fall with fracture	316	401	425
Eloperments	101	112	127
Incidents other than fall	96	87	119
Injuries of unknown origin	47	62	56
Resident to Resident w/ injury	47	70	45
Vehicle Accident	3	2	7

Incident, Reportable. A situation when a facility is required to report information to the Licensing and Certification Unit.

a. Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported.

b. Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle.

c. Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge.

d. An injury due to resident-to-resident incident.

e. An incident that results in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death.

Trends

- a.** Complaints 216 received up from 184 and 66 open at year end, up from 42
- b.** Serial sub-standard care
- c.** Complexity of Ownership and Licensing Applications

Training and Technical Assistance

- On-line Courses
- Quarterly Newsletters
- Email Notifications
- IHCA: Survey and Hot Button Issues
- IHCA nurses training
- A.M. Administrator Training
- Dr. Hahn – Communicable Diseases in RALFs
- Website: www.assistedliving.dhw.idaho.gov

Awards

Gold Awards (deficiency free standard survey):

New Beginnings #2 Community Living Home – Idaho Falls – Deeon Waters
Living Springs, Inc. – Post Falls – Alice Thibault
Ashley Manor-Middleton – Middleton – Maria Torres

Silver Awards (3 or fewer punches on standard survey):

Emerald House – Blackfoot – Rena Blaser
Gables of Shelley-Gables Management, LLC – Shelley – Caroline Young
River Rock Assisted Living – Buhl – Tracy Hulse
The Cottages of Middleton – Middleton – Viki Hunter
Birchwood Retirement Estate, CEC, Inc. – Twin Falls, Idaho – Steve Farnsworth
Royal Villa – Payette – Barbara Little
Indianhead Estates – Weiser – Renae Edwards
Ashley Manor – Midland, Ashley Manor LLC – Nampa – Rayvin Barclay
Legends Park Assisted Living Community – Coeur d'Alene – Mary Beth Hassell
Oasis Shelter Home – Caldwell – Janet Wallace
Touchmark at Meadowlake Village – Meridian – Lisa Fay
Generations Assisted Living and Wellness, Inc. – Rathdrum – Heather Gray
Ashley Manor-Cloverdale, Ashley Manor LLC – Boise – Pam Lenerville
Community Restorium – Bonners Ferry – Karlene Magee
Rosewind House – Garden City – Jacquie Varco
Annabelle House Assisted Living Concepts, Inc. – Caldwell – Vickie McCuiston
Warren House – Burley – Stacey Ramey

Attachment 3

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Update on Certified Family Home Bed Capacity and Vacancies

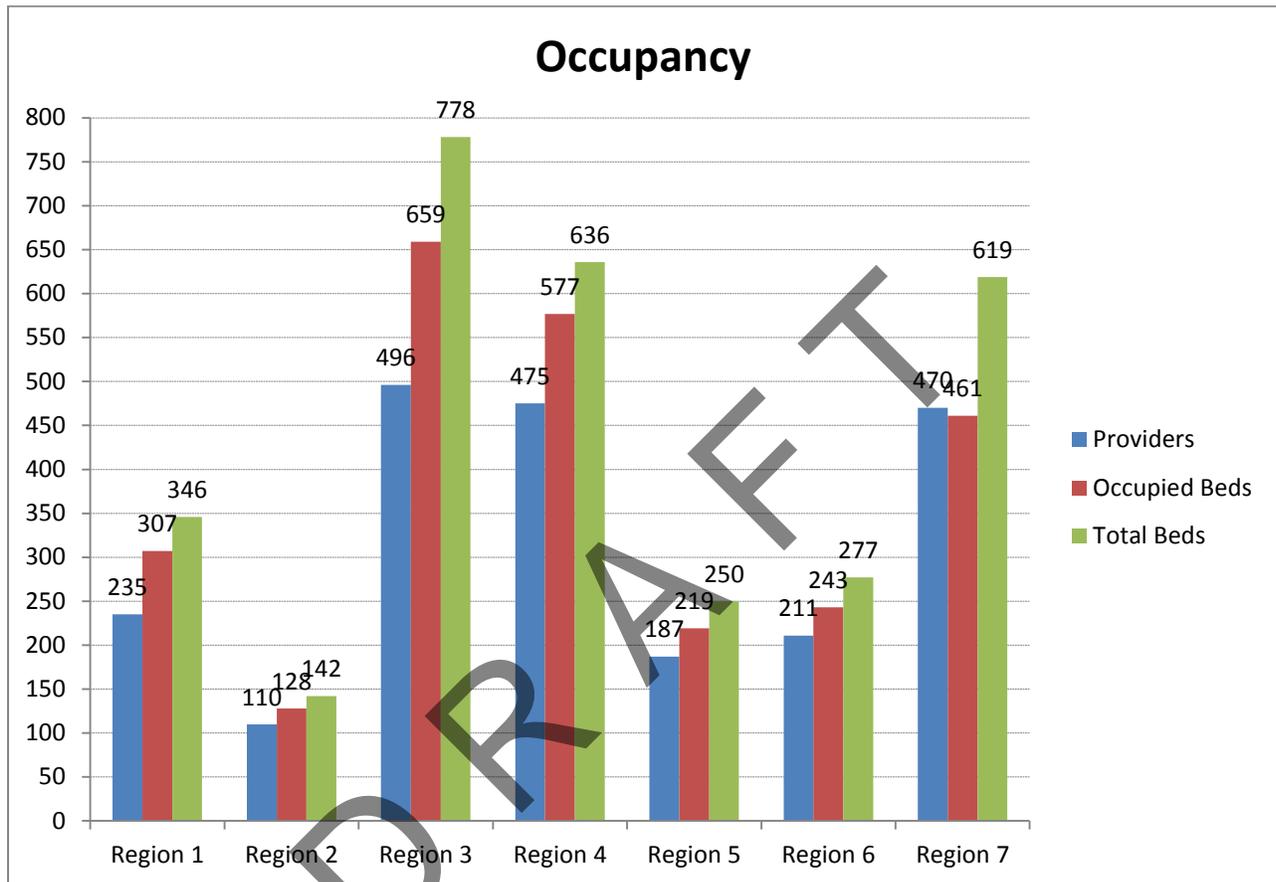


Figure 1 – Occupancy as of 7/25/2013

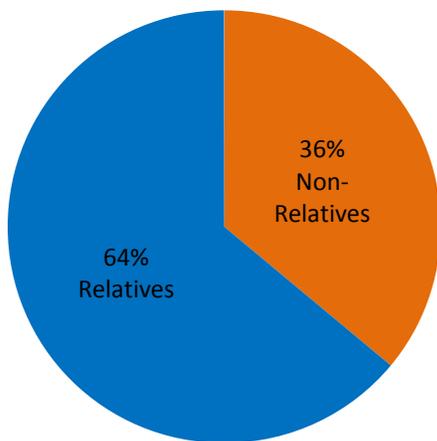


Figure 2 – Relatives as of 7/25/2013

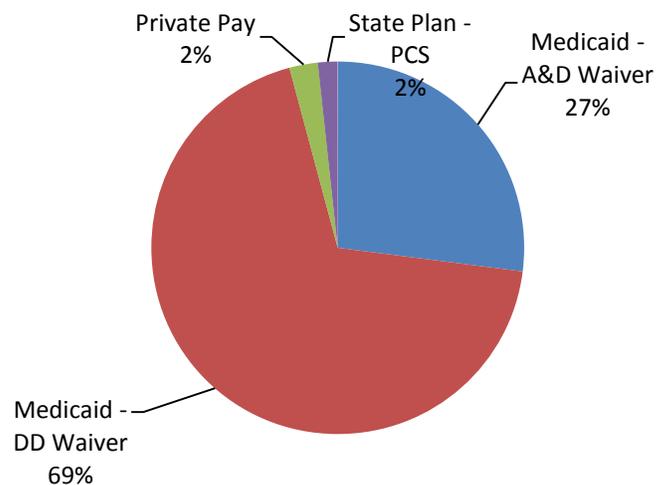
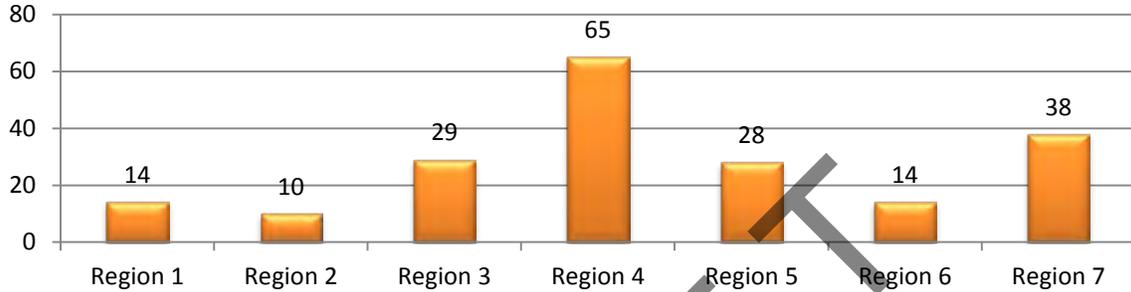


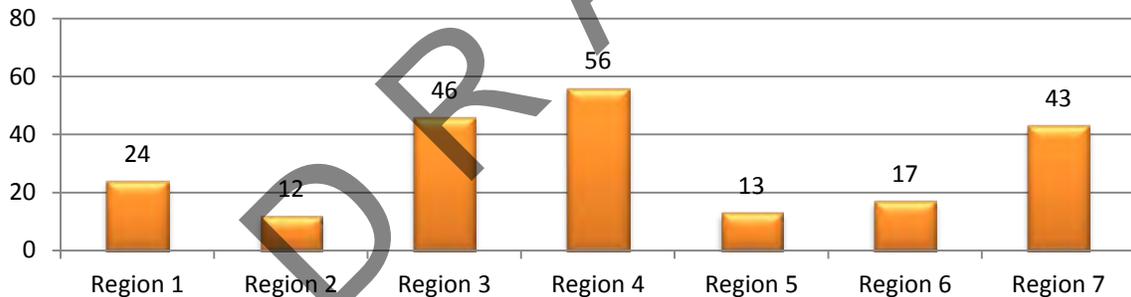
Figure 3 - Payer Source as of 7/25/2013 1

Certified Family Home Closures

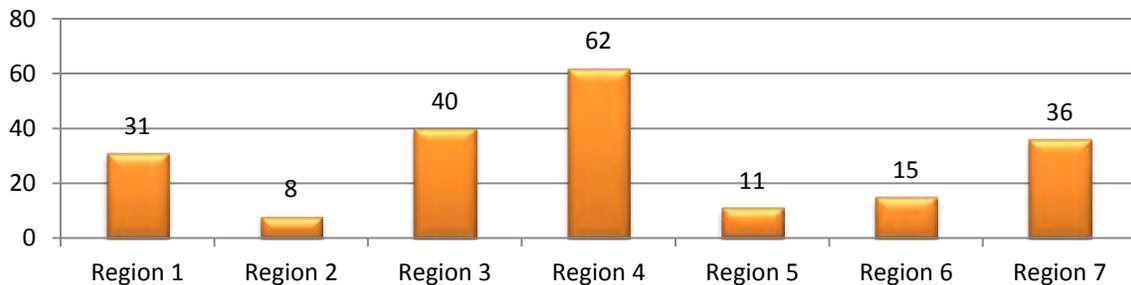
Oct 2010 - Sep 2011
Total 198



Oct 2011 - Sep 2012
Total 211



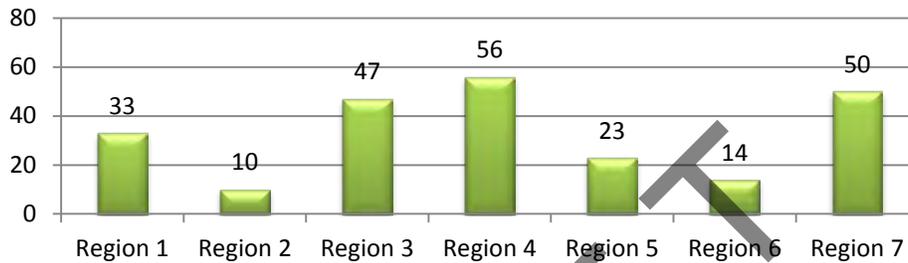
Oct 2012 - Sep 2013
Total 203



Certified Family Home New Providers

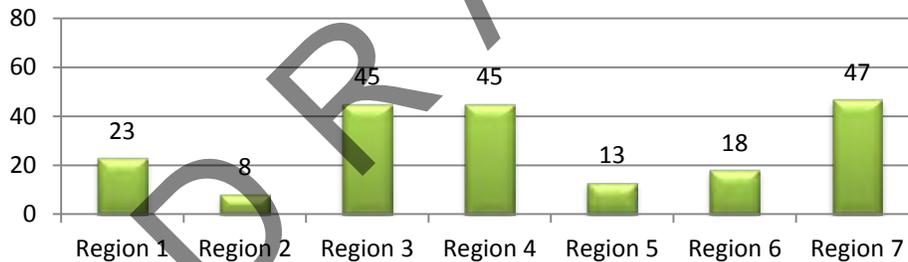
Oct 2010 - Sep 2011

Total 233



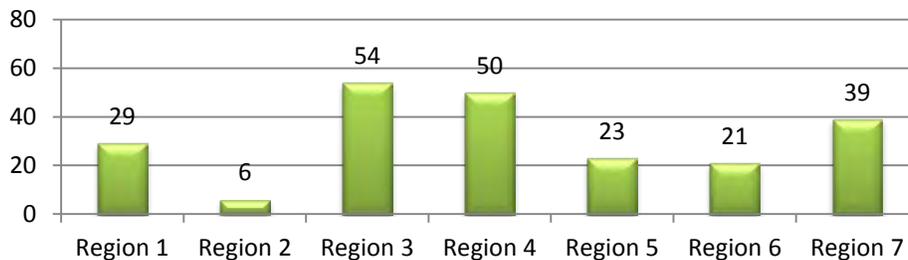
Oct 2011 - Sep 2012

Total 199



Oct 2012 - Sep 2013

Total 222



Attachment 4

DRAFT

Community Care Advisory Council



Update from open issues raised during the July 2013 council meeting.

Unsubstantiated Complaints

Some council members raised the issue of unsubstantiated complaints being posted on the Residential Assisted Living Facilities (RALF) Program website along with substantiated complaints. The council voted to make a request to the Department that we discontinue posting unsubstantiated complaints. I examined the issue, and although I completely understand the perspective of facility owners and operators, the Department's practice will continue to be to post the results of all complaint investigations.

There are two primary reasons we will not be changing our practice of posting the complete results of complaint investigations: 1) publishing all results provides residents, residents' families, and the general public with a more complete picture of our regulatory activities and the results of those activities. Part of that picture actually benefits facility owners and operators by allowing the public to see that not all complaints are substantiated and just because complaints are filed doesn't mean the facility isn't adequately caring for its residents, and 2) we frequently receive public record requests for the results of surveys and complaint investigations for specific facilities. Any records we have concerning complaint investigations, whether the complaint is substantiated or unsubstantiated, are considered public record. Our current practice of posting all results allows us to point individuals to our website and allows us to focus our time and resources on survey activities.

Using Civil Monetary Penalty Funds for Training

During a recent council meeting, I was asked if the Department would consider a statute change related to the use of civil monetary penalties collected by the Department. Currently, the Department is required by statute to use the money only for the following purposes:

- the protection of the health or property of residents of residential or assisted living facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities,
- maintenance of operation of a facility pending correction of deficiencies or closure, and
- reimbursement of residents for personal funds lost.

In the past year, we have summarily suspended the licenses of two facilities and used civil monetary penalty funds to relocate the residents of those facilities to other living arrangements. At this time, we will not seek a statute change because we feel we need to reserve those funds for their intended purpose. We have, however, earmarked other operating funds to invest in educational opportunities

for assisted living facilities because we believe those activities are important. I have outlined below the educational activities we have planned:

- *On-Line Courses in Development:*
 1. Activities
 2. More Than Diarrhea
 3. Developmental Disabilities

- *Speakers:*
 - Idaho Bureau of Occupational Licensing – Dale Eaton
 - OSHA Requirements (locating a speaker)
 - Food Safety – Patrick Guzzle
 - Psychotropic Meds and Dementia Residents – (working on securing the speaker, depending on funding)
 - Restorative Sleep - (working on securing the speaker, depending on funding)

The presentations listed above would be made available via classroom training and video conferencing or by Webinar, followed by posting the recorded session on the Department's YouTube Channel for on-demand access by facility staff.

- *Re-institute Boot Camp for new administrators only*
- *Continue Quarterly Newsletter*
- *Continue to Maintain FAQs on Web Page*
- *IHCA Conference – continue to participate by helping with presentations*

Board of Nursing Proposed Rule Changes

This issue was raised during the July Council meeting. Even though the Council asked nothing of the Department related to this issue, I wanted the Council to be aware that the Department sent written comments to the Board of Nursing expressing our concerns with the proposed rule. Comments were combined from the Division of Licensing and Certification and the Division of Public Health. We outlined several specific concerns, but the main theme of the concerns stems from the potential delegation of nursing tasks to staff who have not been adequately trained to correctly perform the tasks. The Board of Nursing published Rule Docket 23-0101-1301 in the September Administrative Bulletin, and we submitted our comments during the three-week public comment period. To date, we haven't received a response from the Board of Nursing.

Behavioral Placements in Assisted Living

Although the sub-committee hasn't met since the last Council meeting, there has been work continuing by Department staff. Since our July meeting, I have met with a few providers interested in serving the

population we have been discussing. Also, we recognize that any alternative model for caring for this population in assisted living settings must be more cost effective than what Medicaid is currently paying for these individuals for the idea of a higher reimbursement rate to be considered. Pat Martelle, Program Manager in the Division of Medicaid's Office of Mental Health and Substance Abuse, is working with us to see if she can quantify what it costs to care for this population based on the cycle we're seeing in some parts of the state. She believes she may be able to quantify the current cost to the state by pulling claims information.

Advance Notice for Initial Surveys

At the last Council meeting, some members expressed they feel the Department is not following the practice of announcing initial surveys. I committed to looking into the situation and reporting back to the Council. For assisted living facilities, our current practice is to announce when we will be at the facility to conduct an initial survey, unless we are also investigating a complaint as well as conducting the initial survey. If a complaint investigation is combined with the initial survey, we typically do not announce when we will conduct the survey.

Application for Assisted Living License – Definition of “Direct Influence”

A few months ago, the Department implemented a revised application for Residential Care/Assisted Living License. The changes we implemented were intended to help facilitate a new license or change of ownership when corporations are involved. To date, we have experienced that those changes have helped us work more effectively with corporate entities that file applications with us. Council members and other providers, however, expressed difficulty working with the new application and had particular difficulty with the Department's definition of “direct influence.” We have not yet developed an alternative definition, but still intend to work with the Council to develop a better definition. Council members who have ideas about how “direct influence” should be defined are encouraged to contact Jamie Simpson.

Attachment 9

Certified Family Home Program Report

CCAC Meeting

January 28, 2014

The current number of CFH Providers is 2,204. CFH orientation training is in February, so we will see an increase in new providers in the coming month. Due to changes in processes, most proposed CFH providers are ready for their initial certification before they attend orientation training.

In reviewing the numbers of CFH providers completing certification, data was collected from when we started pulling that information together statewide. The information shows:

CFH	SFY 2008	SFY 2009	SFY 2010	SFY 2011	SFY 2012*	SFY 2013*
Number of Providers	1453	1964	2147	2169	2180	2183
Initial Surveys	**	358	356	258	132	188
Recertification Surveys	**	**	1939	2088	1308	1853
Follow-up Surveys	**	**	0	0	2	34
Complaint Surveys	**	26	65	42	39	74
Desk Reviews	**	**	**	**	**	198
Physical Home Inspections	**	**	**	**	**	30
TOTAL SURVEYS	**	**	2360	2388	1481	2377
FTE	10	10	7	7	9	10

CFH Revocations – During calendar year 2013, there were twenty-one (21) CFH provider revocations. Eight revocations were for non-payment of fees. These CFH providers had received their invoices for quarterly payments. There were two phone calls made to the providers, explaining the urgency to contact the CFH program regarding their past due fees.

An extra step was added to the process to get providers into compliance. An Intent to Revoke letter is also now sent to the CFH providers who are past due on their fees at the six-month past due (\$150)

timeframe. After 14 days of no response to this Intent to Revoke letter, a final revocation letter is sent to the provider, giving them twenty-eight (28) days to request an administrative review.

Residents who were still in those eight Certified Family Homes continued to maintain their Medicaid and other services identified in their care plans.

CFH Complaint Allegations SFY 2013	Total	Unsubstantiated	Substantiated
Neglect	17	13	4
Quality of Care/Services	11	7	4
Lack of Supervision	7	5	2
Abuse – Verbal	6	5	1
Exploitation	6	4	2
Physical Environment	6	3	3
Violation of Rights	6	3	3
Abuse – Physical	5	3	2
Abuse – Sexual	5	4	1
Accident – Requiring Medical Intervention	5	5	0
Abuse – Mental	3	2	1
Law Enforcement Involvement	3	2	1
Medication Error	2	1	1
Missing Client	2	2	0
Restraints	2	1	1
Other	10	6	4
TOTALS	96	66	30