

**MINUTES OF THE  
HEALTH AND HUMAN SERVICES INTERIM COMMITTEE**  
Wednesday, November 20, 2013 – 8:30 a.m. – Room 20 House Building

**Members Present:**

Sen. Evan J. Vickers, Senate Chair  
Rep. Paul Ray, House Chair  
Sen. Allen M. Christensen  
Sen. Luz Robles  
Sen. Brian E. Shiozawa  
Sen. Todd Weiler  
Rep. Stewart Barlow  
Rep. Rebecca Chavez-Houck  
Rep. LaVar Christensen  
Rep. Tim M. Cosgrove  
Rep. Brian M. Greene

Rep. Michael S. Kennedy  
Rep. Ronda Rudd Menlove  
Rep. Edward H. Redd

**Staff Present:**

Mr. Mark D. Andrews, Policy Analyst  
Ms. Cathy J. Dupont, Associate General Counsel  
Mr. Samuel C. Johnston, Associate General Counsel  
Ms. Lee A. Killian, Associate General Counsel  
Ms. Lori Rammell, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Vickers called the meeting to order at 8:45 a.m.

**MOTION:** Rep. Ray moved to approve the minutes of the October 16, 2013, meeting. The motion passed unanimously. Sen. Robles, Sen. Weiler, Rep. Barlow, Rep. Cosgrove, Rep. Kennedy, Rep. Menlove, and Rep. Redd were absent for the vote.

The committee received copies of the Economic Development Task Force 2013 Final Report.

**2. Tobacco, Electronic Cigarettes, and Tobacco Paraphernalia**

Sen. Stuart C. Reid introduced draft legislation "Age Limit for Tobacco and Related Products" (2014FL-0037/005), which increases the legal age for smoking from 19 to 21 and makes related changes.

Rep. Kraig Powell reviewed the provisions of the draft legislation. He indicated that the legislation is intended to address the immense human costs of tobacco, that studies indicate the legislation will be effective, and that he knows of no negative effects created by the legislation that people would not be willing to live with.

Ms. Beverly May, Regional Director, Campaign for Tobacco Free Kids, said that tobacco use is the leading cause of preventable deaths, that it costs the state \$345 million each year, and that nearly 95% of smokers begin smoking before the age of 21. She also spoke of how the legislation will deter 19- to 21-year-olds from supplying tobacco products to minors.

Dr. W. David Patton, Executive Director, Utah Department of Health, said that the draft legislation addresses the most preventable cause of death and disease. He said that delaying the age at which a person starts smoking reduces the person's risk of becoming addicted. He said that 80% of kids who start smoking in high school become addicted, that 62% of underage smokers get their cigarettes from social contacts, and that 90% of adults who purchase tobacco for underage smokers are themselves under age 21. He said that the draft legislation would save millions of dollars in the long term and indicated that the personal responsibility argument against the legislation does not apply because of the impacts of second-hand smoke

and Medicaid costs on others.

Sen. Reid indicated that the bill changes the smoking age to 21 because 21 is the age for legal alcohol use, 21 is an age at which people are more likely—than at age 19—to recognize that something is irresponsible, and 21 is on the borderline of political acceptability.

Mr. Cameron Mitchell, Utah Association of Local Health Departments, said that while personal rights and personal choice are considerations for determining the age at which people should be allowed to smoke, the average age at which people begin smoking in Utah is 12.6 years old. He said the draft legislation would lessen the likelihood of young smokers supplying tobacco products to 13-year-olds simply because young smokers would be less likely when 21 than when 19 to be associating with 12- and 13-year-olds. He added that changing the smoking age to 21 would make it easier for retailers to identify underage minors attempting to purchase tobacco products.

Sen. Reid related an experience he had with his father, who smoked. He said that studies are replete with evidence that smoking will eventually cause death, and that the same cannot be said of alcohol. He acknowledged that personal liberties are an important consideration, but said that 21 seems to be a more responsible age than 19. He spoke of young men and young women serving in the military and the restrictions placed upon them, primarily because of their youth and immaturity. Sen. Reid gave examples of government regulations regarding speed limits, food production, etc. that prevent harm to society at the expense of some personal liberty. He said there must be a balance between freedom and what is best for society. He said he believes that a large portion of the community supports this proposed age increase.

Mr. Dave Davis, President, Utah Food Industry Association and Utah Retail Merchants Association, spoke in opposition to the draft legislation. He agreed that smoking is harmful and said that only a tiny fraction of his association membership sells tobacco products. He indicated that the legal smoking age, however, is a question of personal liberty and maturity. He said that his association members are less concerned about this particular issue than they are about the trend they see of government regulating the lives and decisions of individuals. He said that since 18 is the age at which people are allowed to vote, enlist in the military, and enter into contracts, this seems to be the age at which society recognizes people as adults. He said that he understands that the increase in the smoking age to 19 removed tobacco from high schools, but he does not see sufficient reason to raise the age to 21. He said that the arguments presented in favor of the draft legislation seem to support an outright ban on tobacco products, not an increase in the legal age for use. He wondered when, in the state of Utah, a person can be considered an adult and trusted to make his or her own health decisions.

**MOTION:** Sen. Christensen moved that the committee recommend draft legislation "Age Limit for Tobacco and Related Products" as a committee bill. The motion passed with Chair Vickers, Sen. Weiler, Rep. Cosgrove, Rep. Greene, and Rep. Kennedy voting in opposition. Rep. Ray was absent for the vote.

### **3. Controlled Substance Database Access by Medicaid Accountable Care Organizations**

Sen. Christensen presented draft legislation "Controlled Substance Database Amendments" (2014FL-0455/002), which permits authorized employees of a Medicaid accountable care organization to have access to the state's controlled substance database.

Mr. Mark Brinton, General Counsel and Director of Government Affairs, Utah Medical Association, requested that consideration of the draft legislation be postponed. He said there are grave privacy concerns about giving database access to a new group of people and expressed concern that the legislation would create a precedent for further access by other commercial insurers.

Rep. Kennedy suggested that all those who have access to the database be bound by the same restrictions and penalties for misuse as doctors. Sen. Christensen indicated that all of those who access the database would be subject to the same penalties.

Mr. Doug Springmeyer, representing all four Utah Medicaid managed care organizations (MCOs), explained that under the proposed legislation, MCOs would enter into contracts with the Utah Department of Health specifying which employees in the MCOs would have access to the database and that the MCOs would be financially liable for the actions of their employees. He said that employees given access would be required to have a license, a background check, and training. He indicated that authorized employees would have access to information from the database only under the following conditions:

- (1) the MCO sees evidence of a Medicaid enrollee abusing a Medicaid benefit that involves a controlled substance; and
- (2) the information provided pertains only to the Medicaid enrollee.

Mr. Michael Hales, Deputy Director and State Medicaid Director, Utah Department of Health, clarified that MCO employees would not have direct access to the controlled substance database. Instead, those employees, like Department of Health employees that currently have access to the database, would be authorized to ask the Division of Occupational and Professional Licensing to send them information from the database about specific Medicaid clients with aberrant billing patterns.

**MOTION:** Sen. Christensen moved that the committee recommend draft legislation "Controlled Substance Database Amendments." The motion passed unanimously. Rep. Ray was absent for the vote.

#### **4. Telehealth**

Rep. Menlove explained that the purpose of this agenda item is to prepare the committee for future legislation related to the Utah Telehealth Network.

Ms. Deb LaMarche, Associate Director, Utah Telehealth Network, distributed a map and other information about the Utah Telehealth Network and presented "Utah Telehealth Network." She discussed the purpose, funding, and operation of the network and summarized the challenges it faces, including inconsistent and outdated reimbursement policies, interstate licensure, and the need to upgrade the network.

Mr. Scott McDonald, Information Technology Director, Beaver Valley Hospital and Milford Valley Hospital, reviewed some of the network's benefits, including the opportunity to participate in the Telestroke, Teleburn, and Teletherapy programs.

Rep. Menlove recognized the Telehealth Network board members present in the meeting. She added that she would be back with legislation on telehealth at the beginning of the upcoming session.

#### **5. Physical Activity: Fit to Learn**

Rep. Ray explained that physical activity affects student performance. He suggested that policies could be implemented within public schools to promote increased physical activity and learning.

Ms. Heather Borski, Director of the Bureau of Health Promotion, Utah Department of Health, distributed "Fit to Learn, Healthy Bodies=Healthy Minds." She said that physical activity is a health intervention and outlined the difference between physical education and physical activity. She said that schools are the ideal setting for addressing physical activity.

Dr. James Hannon, Department Chair of Exercise and Sports Science, University of Utah, and Director of the university's Pedagogy and Physical Assessment Lab, discussed studies conducted in Utah showing that increased physical activity is related to improved academic performance. He said that studies conducted across the country provide similar results.

Mr. John Robison, Davis School District Curriculum Department, described pilots conducted in two of the district's elementary schools where teachers were trained in ways to promote physical activity in the classroom. He stated that, for 15 minutes each morning and 10 minutes each afternoon, students performed designated physical activities in the classroom. He said that while people were originally concerned about the loss of teaching time, students in each of the pilot classes experienced increases in test scores and improved attitudes about exercise.

Ms. Cassy Stanger, mother of a child with a rare brain disorder, said that her daughter learns through physical activity and especially enjoys the program implemented in her Davis County school. She said that her daughter's reading scores have improved as a result of the 25 minutes she spends each day exercising in her school classroom.

Rep. Ray said that he is not proposing legislation at this point, but that there may be a need for funding in the future to implement the Davis County School District pilot program throughout the state.

Rep. Eric K. Hutchings said that science has established that there is a relationship between a person's health and the person's academic performance. He said that children who are not up, moving, and active are not as prepared for and capable of learning as children who are active and moving.

## **6. Update on State and Federal Health Care Reform**

Sen. Christensen, Cochair of the Legislature's Health Reform Task Force, directed the committee's attention to "An Update on Health Care Reform: A Preliminary Report by the Utah Legislature's Health Reform Task Force," distributed to the committee by committee staff.

## **7. Child Welfare**

Sen. Christensen, Senate Chair of the Child Welfare Legislative Oversight Panel, directed the committee's attention to "Child Welfare Legislative Oversight Panel 2013 Annual Report," distributed to the committee by committee staff.

## **8. Autism Funding**

Sen. Shiozawa introduced the discussion of autism funding and suggested the committee focus on treatment outcomes, utilization, and cost.

Rep. Menlove said that there are three pilot programs for funding autism services:

- a Medicaid waiver pilot program;
- a Public Employees Health Program pilot program; and
- an Autism Treatment Account created by the Legislature several years ago and funded with \$1 million in state funds and \$0.75 million in private funds donated by Zions Bank and Intermountain Healthcare.

Mr. Mark Babitz, Director of the Division of Family Health and Preparedness, Utah Department of Health, distributed "Autism Treatment Account Fact Sheet," "Medicaid Autism Waiver Fact Sheet," and "Autism Services Pilot Projects Update." He reported that assessments of children receiving at least six months of continuous services in the Autism Treatment Account pilot program showed improvement in both their behavioral symptoms and their adaptive skills.

Mr. Hales reported on the outcomes of the Medicaid Autism Waiver pilot program. He said that the 137 or so children receiving a full six months of services in the program have, on average, been able to meet over 90 of 170 assessment milestones after receiving services, compared with the 64 milestones they were able to meet before receiving services. Mr. Hales noted that although a control group was not used to the study the effectiveness of the pilot program, he could provide the committee with research of the effectiveness of applied behavioral analysis. The pilot program relied largely on the use of applied behavioral analysis.

Mr. R. Chet Loftis, Director, Public Employees Health Program, reported that of the 23 children accepted into the PEHP autism pilot program, three left the program, and six did not seek services. He said that children showed improvement after participating in the program for six months. He indicated, however, that more study needs to be done to determine the effectiveness of the program. (See "Autism Pilot Program Update," provided to the committee after the meeting.)

Sen. Shiozawa reiterated that these preliminary outcomes validate that early intervention helps children and show that the costs of treatment may not be as much as anticipated. He said he has had positive feedback from the families involved.

## **9. Epilepsy Treatment**

Rep. Gage Froerer said that he intends to introduce legislation during the 2014 General Session that will legalize the use of an oil from the cannabis plant to treat seizures. He spoke of reports of the oil's effectiveness, but said that more research needs to be done. He indicated that a research component will be included in his legislation.

Ms. Annette Maughan, President, Epilepsy Association of Utah, distributed and reviewed a written statement on the use of "Alepsia," or cannabidiol oil, for the treatment of children with severe epilepsy, and spoke in favor of legalizing use of the oil in Utah. Ms. Maughan also distributed a letter from Dr. Francis M. Filloux, Chief of the Division of Pediatric Neurology at the University of Utah School of Medicine, in support of legalization.

Mr. Johnston responded to questions from the committee, indicating that the possession, distribution, or transportation of cannabidiol oil would violate the federal Controlled Substances Act.

The committee discussed how the oil might be produced, tested, and distributed.

Rep. Froerer said there is a body of research on cannabidiol oil that he hopes to bring to the Legislature during the 2014 General Session.

## **10. Adjourn**

Rep. Cosgrove moved to adjourn the meeting. The motion passed unanimously. Sen. Christensen, Sen. Robles, Sen. Weiler, Rep. Chavez-Houck, Rep. Greene, and Rep. Menlove were absent for the vote.

Chair Vickers adjourned the meeting at 12:26 p.m.