

# IDAHO ADMINISTRATIVE BULLETIN

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# Preface

*The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rulemaking activities.*

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletin is cited by year and issue number. For example, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.*

## **RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE**

*The **Idaho Administrative Code** is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been adopted and approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are **not** printed in the Administrative Code and are published only in the Bulletin.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Index of Administrative Rulemaking**, printed in each Bulletin.*

## **TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

*The state of Idaho administrative rulemaking process comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings consist of all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.*

### **NEGOTIATED RULEMAKING**

*Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rulemaking to the temporary and/or proposed rule stage.*

### **PROPOSED RULEMAKING**

*A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:*

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

*As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.*

### **TEMPORARY RULEMAKING**

*Temporary rules may be adopted only when the governor finds that it is necessary for:*

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

*If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.*

*A temporary rule expires at the conclusion of the next succeeding regular session of the legislature unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.*

*In cases where the text of the temporary rule is the same as that of the proposed rule, the rulemaking can be done concurrently as a temporary/proposed rule. State law requires that the text of a proposed or temporary rule be published in the Administrative Bulletin. Combining the rulemaking allows for a single publication of the text.*

*An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.*

### **PENDING RULEMAKING**

*A pending rule is a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review before it becomes a final, enforceable rule.*

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:*

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

*Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.*

### **FINAL RULEMAKING**

*A final rule is a rule that has been adopted by an agency under the regular rulemaking process and is in effect.*

*No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.*

### **AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN**

*The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, BYU Idaho Library, and Northwest Nazarene College Library.*

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## SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

*The Administrative Bulletin* is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.

*The Administrative Code*, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes tables of contents, reference guides, and a subject index.

*Individual Rule Chapters* and *Individual Rulemaking Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

**Internet Access** - The Administrative Code and Administrative Bulletin, individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

**EDITOR'S NOTE:** All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

### **IDAPA 38.05.01.060.02.c.ii.**

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

"01." refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing".

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

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## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

### "DOCKET NO. 38-0501-0101"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).

"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

### "(BREAK IN CONTINUITY OF SECTIONS)"

## INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:

**"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."**

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

**"...in accordance with IDAPA 38.05.01.201."**

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the agency rule.

"01" denotes the Chapter number of the agency rule.

"201" references the main Section number of the rule that is being cited.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

**"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, 'Rules Governing Capitol Mall Parking.'"**



**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002**

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02-1	January, 2002	<b>*November 14, 2001</b>	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
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02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	<b>**August 21, 2002</b>	October 2, 2002	October 23, 2002
02-11	November, 2002	September 25, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

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03-11	November, 2003	September 24, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 22, 2003	December 3, 2003	December 24, 2003

***\*Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.***

***\*\*Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

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<b>IDAPA 37</b>	<b>WATER RESOURCES, Department of</b>	<b>VOLUME 8</b>
<b>IDAPA 42</b>	<b>WHEAT COMMISSION, Idaho</b>	<b>VOLUME 8</b>

**OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR  
IDAHO DEPARTMENT OF ADMINISTRATION**

**RULES APPROVED AND EXTENDED BY THE FIFTY-SIXTH LEGISLATURE  
SECOND REGULAR SESSION - 2002**

**NOTICE OF LEGISLATIVE APPROVAL OF PENDING RULES AS FINAL RULES  
AND EXTENSION OF TEMPORARY RULES**

**OMNIBUS RULEMAKING NOTICE**

**AUTHORITY:** In compliance with Sections 67-5224(7) and 67-5226(3), Idaho Code, notice is hereby given by the Office of the Administrative Rules Coordinator that the Fifty-sixth Legislature in the Second Regular Session - 2002, has approved the following pending rules as final rules and has extended temporary rules.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the notice:

The following lists of final and temporary rules include those rules which were reviewed during the 2002 Second Regular Session of the Fifty-sixth Legislature of the State of Idaho. Those pending and temporary rulemakings affected by concurrent resolution are listed with the number of the concurrent resolution. All other pending rules were approved as final without a concurrent resolution. Temporary rules have been extended by Senate Concurrent Resolution 130 and remain in effect. Pending fee rules were reviewed and approved by Senate Concurrent Resolution 131. The following lists include the docket numbers of the rulemakings, the volumes of the Idaho Administrative Bulletins in which the rulemaking dockets were published, the final or temporary effective dates of the rules, and the number of the concurrent resolution, if applicable.

FINAL RULES				
DOCKET NUMBER	PENDING RULE PUBLICATION - BULLETIN VOL.	PROPOSED RULE PUBLICATION - BULLETIN VOL.	EFFECTIVE DATE	ACTION TAKEN BY CONCURRENT RESOLUTION
02-0212-0101	02-1	01-8	3-15-02	
02-0213-0101	02-1	01-8	3-15-02	
02-0214-0101	01-12	01-9	3-15-02	
02-0302-0101 (Repeal of Chapter)	02-1	01-8	3-15-02	
02-0403-0001	01-8	00-10	2-28-02	Subsections 388.04 & 405.01 rejected by SCR 126
02-0403-0002	01-12	01-7	3-15-02	
02-0415-0101	01-8	01-5	3-15-02	
02-1416-0101	02-1	01-10	3-15-02	
02-0417-0101	01-12	01-7	3-15-02	
02-0418-0101	02-1	01-10	3-15-02	
02-0641-0101	02-1	01-8	3-15-02	
06-0101-0101	Proclamation Published 01-6		7-6-01	

<b>FINAL RULES</b>				
<b>DOCKET NUMBER</b>	<b>PENDING RULE PUBLICATION - BULLETIN VOL.</b>	<b>PROPOSED RULE PUBLICATION - BULLETIN VOL.</b>	<b>EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
06-0101-0102	Proclamation Published 01-6		4-17-01	
06-0101-0103	Proclamation Published 01-12		1-4-02	Subjection 108.04.b.vii. rejected by HCR 044
07-0104-0101	01-9	01-6	3-15-02	
07-0107-0101	02-1	01-10	7-1-02	
07-0205-0101	01-10	01-7	3-15-02	
07-0206-0101	01-10	01-7	3-15-02	
07-0312-0101	02-1	01-10	3-15-02	
07-0601-0101	01-10	01-7	3-15-02	
08-0105-0101 (Repeal of Chapter)	02-1	01-10	3-15-02	
08-0105-0102 (Rewrite of Chapter)	02-1	01-10	3-15-02	
08-0112-0101	02-1	01-10	3-15-02	
08-0202-0101	01-12	01-10	7-1-02	
08-0203-0101	02-1	01-10	3-15-02	
08-0203-0102	02-1	01-10	3-15-02	
09-0130-0101	01-12	01-9	3-15-02	
09-0130-0102	01-12	01-9	3-15-02	
09-0130-0103	01-12	01-9	3-15-02	
09-0130-0104	01-12	01-9	3-15-02	
09-0130-0105	01-12	01-9	3-15-02	
09-0135-0101	01-12	01-9	3-15-02	
09-0135-0102	01-12	01-9	3-15-02	
09-0135-0103	01-12	01-9	3-15-02	
09-0135-0104	02-1	01-10	3-15-02	
09-0135-0105	02-1	01-10	3-15-02	
09-0140-0101 (Repeal of Chapter)	01-12	01-9	3-15-02	
09-0160-0101	02-1	01-10	3-15-02	
10-0101-0101	01-12	01-9	3-15-02	

<b>FINAL RULES</b>				
<b>DOCKET NUMBER</b>	<b>PENDING RULE PUBLICATION - BULLETIN VOL.</b>	<b>PROPOSED RULE PUBLICATION - BULLETIN VOL.</b>	<b>EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
10-0102-0101	01-12	01-9	3-15-02	
11-0201-0101	01-12	01-10	3-13-02	Fee approved by SCR 131
11-0501-0101	01-12	01-10	3-13-02	Fee approved by SCR 131
11-1001-0101	01-12	01-10	3-13-02	Fee approved by SCR 131
11-1101-0101	01-10	01-7	3-15-02	
11-1101-0102	01-12	01-10	3-15-02	
12-0103-0101 (Repeal of Chapter)	02-1	01-10	3-15-02	
12-0108-0101	02-1	01-10	3-13-02	Fee approved by SCR 131
13-0104-0101	02-1	01-10	3-15-02	
13-0108-0101	02-1	01-10	3-15-02	
13-0108-0103	Proclamation Published 01-10		3-19-01	
13-0109-0101	02-1	01-10	3-15-02	
13-0109-0102	Proclamation Published 01-10		8-13-01	
13-0111-0101	Proclamation Published 01-10		5-21-01	
13-0117-0101	02-1	01-10	3-15-02	
14-0101-0101	01-12	01-9	3-13-02	Fee approved by SCR 131
15-0101-0101	01-9	01-6	3-15-02	
15-0230-0101	01-10	01-7	3-15-02	
15-0401-0101	02-1	01-10	Vacated	Vacated
16-0208-0101	02-1	01-10	3-13-02	Fee approved by SCR 131
16-0214-0101	02-1	01-10	3-12-02	Entire docket rejected by SCR 120
16-0304-0101	01-4	01-1	3-15-02	
16-0304-0102	01-12	01-1	3-15-02	
16-0305-0101	01-4	01-1	3-15-02	

<b>FINAL RULES</b>				
<b>DOCKET NUMBER</b>	<b>PENDING RULE PUBLICATION - BULLETIN VOL.</b>	<b>PROPOSED RULE PUBLICATION - BULLETIN VOL.</b>	<b>EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
16-0305-0102	01-4	01-1	3-15-02	
16-0305-0103	01-11	01-8	3-15-02	
16-0308-0101	01-6	01-1	3-15-02	
16-0308-0102	02-1	01-10	3-15-02	
16-0309-0011	01-3	00-10	3-15-02	
16-0309-0101	01-9	01-6	3-15-02	
16-0309-0102	01-9	01-6	3-15-02	
16-0309-0104	01-10	01-7	3-15-02	
16-0309-0105	01-11	01-8	3-15-02	
16-0309-0106	01-12	01-9	3-15-02	
16-0309-0107	02-1	01-10	3-15-02	
16-0309-0108	02-1	01-10	3-15-02	
16-0309-0109	02-1	01-10	3-15-02	
16-0309-0110	02-1	01-10	3-15-02	
16-0309-0112	02-1	01-10	3-15-02	
16-0309-0113	02-1	01-10	3-15-02	
16-0309-0114	02-1	01-10	3-15-02	
16-0310-0101	01-11	01-8	3-15-02	
16-0310-0102	02-1	01-10	3-15-02	
16-0314-0001	01-11	00-10	3-15-02	
16-0414-0101	01-10	01-6	3-15-02	
16-0506-0101 (Repeal of Chapter)	01-12	01-1	3-15-02	
16-0506-0102 (Rewrite of Chapter)	01-12	01-1	3-15-02	
16-0602-0101	02-1	01-10	3-15-02	
16-0614-0101	01-10	01-6	3-15-02	
17-0602-0101	02-1	01-10	3-15-02	
17-0701-0101	02-1	01-10	3-15-02	
18-0125-0101	01-12	01-8	3-15-02	
18-0144-0101	01-12	01-6	3-13-02	Fee approved by SCR 131
18-0154-0101	01-10	01-1	3-15-02	



<b>FINAL RULES</b>				
<b>DOCKET NUMBER</b>	<b>PENDING RULE PUBLICATION - BULLETIN VOL.</b>	<b>PROPOSED RULE PUBLICATION - BULLETIN VOL.</b>	<b>EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
18-0156-0101	01-12	01-8	3-15-02	
18-0169-0101	01-10	01-1	3-15-02	
18-0170-0101	01-10	01-1	3-15-02	
18-0172-0101	01-10	01-1	3-15-02	
18-0173-0101	01-10	01-1	3-15-02	
19-0101-0101	01-12	01-10	3-15-02	
20-0314-0101	02-1	01-10	3-13-02	Fee approved by SCR 131
21-0101-0101	01-12	01-10	3-15-02	
21-0102-0101	01-12	01-10	3-15-02	
21-0103-0101	01-12	01-10	3-15-02	
22-0103-0101	02-1	01-10	3-15-02	
22-0105-0101 (Repeal of Chapter)	02-1	01-10	3-15-02	
22-0105-0102 (Rewrite of Chapter)	02-1	01-10	3-13-02	Fee approved by SCR 131
22-0114-0101	02-1	01-10	3-15-02	
23-0101-0101	01-10	01-8	3-15-02	
23-0101-0102	01-10	01-8	3-15-02	
23-0101-0103	01-10	01-8	3-15-02	
24-0101-0101	01-12	01-10	3-15-02	
24-0201-0101	01-12	01-10	3-13-02	Fee approved by SCR 131
24-0301-0101	01-12	01-10	3-15-02	
24-0401-0101	01-12	01-10	3-8-02	Subjection 600.05.b. rejected by HCR 048
24-0801-0101	01-11	01-8	3-13-02	Subjection 500.07 rejected by SCR 131; Remainder of docket approved by SCR 131
24-0901-0101	01-12	01-10	3-13-02	Fee approved by SCR 131
24-1001-0101	01-12	01-10	3-15-02	

<b>FINAL RULES</b>				
<b>DOCKET NUMBER</b>	<b>PENDING RULE PUBLICATION - BULLETIN VOL.</b>	<b>PROPOSED RULE PUBLICATION - BULLETIN VOL.</b>	<b>EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
24-1101-0101	01-11	01-8	3-13-02	Fee approved by SCR 131
24-1101-0102	01-12	01-10	3-15-02	
24-1201-0101	02-1	01-10	3-15-02	
24-1401-0101	01-11	01-8	3-13-02	Fee approved by SCR 131
24-1501-0101	02-1	01-10	3-13-02	Fee approved by SCR 131
24-1801-0101	01-12	01-10	3-13-02	Fee approved by SCR 131
24-1901-0101	01-12	01-10	3-15-02	
24-2001-0101 (Repeal of Chapter)	01-12	01-10	3-15-02	
24-2001-0102 (Rewrite of Chapter)	01-12	01-10	3-15-02	
25-0101-0101	02-1	01-10	3-15-02	
26-0130-0101	02-1	01-10	3-15-02	
27-0101-0101	01-12	01-10	3-15-02	
27-0101-0102	01-12	01-10	3-13-02	Fee approved by SCR 131
29-0102-0101	02-1	01-10	3-15-02	
31-4101-0101	01-10	01-7	3-15-02	
31-4201-0101	01-12	01-10	3-15-02	
31-5101-0101	01-10	01-7	3-15-02	
33-0101-0101 (Repeal of Chapter)	01-10	01-6	3-15-02	
33-0101-0102 (Rewrite of Chapter)	01-10	01-6	3-15-02	
34-0506-0101	02-1	01-7	3-15-02	
35-0100-0101	02-1	01-10	3-15-02	
35-0101-0101	02-1	01-10	3-15-02	
35-0102-0101	02-1	01-9	3-15-02	
35-0102-0102	02-1	01-10	2-18-02	Section 131 rejected by HCR 041

<b>FINAL RULES</b>				
<b>DOCKET NUMBER</b>	<b>PENDING RULE PUBLICATION - BULLETIN VOL.</b>	<b>PROPOSED RULE PUBLICATION - BULLETIN VOL.</b>	<b>EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
35-0103-0102	02-1	01-10	3-15-02	
35-0103-0103	02-1	01-8	3-15-02	
35-0103-0104	02-1	01-10	3-15-02	
35-0103-0105	02-1	01-10	3-15-02	
35-0105-0101	02-1	01-9	3-15-02	
35-0108-0101	02-1	01-10	3-15-02	
35-0109-0101	02-1	01-9	3-15-02	
35-0112-0101	02-1	01-9	3-15-02	
35-0201-0101	02-1	01-10	3-15-02	
37-0201-0101	02-1	01-10	3-15-02	
38-0501-0101 (Repeal of Chapter)	01-10	01-7	3-15-02	
38-0501-0102 (Rewrite of Chapter)	01-10	01-7	3-15-02	
39-0342-0101	01-9	01-5	3-15-02	
39-0342-0102	01-9	01-5	3-13-02	Fee approved by SCR 131
39-0381-0101	01-10	01-7	3-15-02	
45-0101-0101	01-12	01-10	3-15-02	
48-0104-0101	02-1	01-7	3-15-02	
48-0105-0101	02-1	01-7	3-15-02	
54-0201-0101	01-8	01-5	3-15-02	
58-0100-0002	01-8	00-8	3-15-02	
58-0101-0002	01-12	01-8	3-15-02	
58-0101-0101	02-1	01-8	3-15-02	
58-0101-0102	01-12	01-1	3-15-02	
58-0101-0103	01-12	01-7	3-15-02	
58-0101-0104	02-1	01-9	3-13-02	Fee approved by SCR 131
58-0102-0101	02-1	01-8	3-15-02	
58-0102-0102	02-1	01-8	3-15-02	
58-0102-0103	02-1	01-8	3-15-02	
58-0105-0101	02-1	01-9	3-15-02	

<b>FINAL RULES</b>				
<b>DOCKET NUMBER</b>	<b>PENDING RULE PUBLICATION - BULLETIN VOL.</b>	<b>PROPOSED RULE PUBLICATION - BULLETIN VOL.</b>	<b>EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
58-0108-0101	02-1	01-7	3-15-02	
58-0109-0001	01-8	00-12	3-15-02	
58-0110-0101	01-12	01-8	3-15-02	
58-0114-0101 (Repeal of Chapter)	02-1	01-10	3-15-02	
58-0116-0101 (Repeal of Chapter)	01-12	01-9	3-15-02	
58-0123-0001	01-8	00-8	3-15-02	
59-0108-0101	01-9	01-1	3-15-02	

<b>TEMPORARY RULES EXTENDED BY SENATE CONCURRENT RESOLUTION 130</b>				
<b>DOCKET NUMBER</b>	<b>TEMPORARY RULE PUBLICATION - BULLETIN VOL.</b>	<b>TEMPORARY RULE EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>	
02-0215-0101	01-12	1-1-02	SCR 130	
02-0216-0101	01-12	1-1-02	SCR 130	
02-0601-0101	01-2	12-20-00	SCR 130	
02-0609-0201	02-1	11-9-01	SCR 130	
02-0616-0101	01-8	7-1-01	Sections 100.03; 300; 500.04 and .05 rejected by SCR 125; Remainder of rulemaking extended by SCR 125	
02-0626-0201	02-1	1-2-02	SCR 130	
02-0626-0202	02-1	1-2-02	SCR 130	
02-0627-0201	02-1	1-2-02	SCR 130	
02-0628-0201	02-1	1-2-02	SCR 130	
02-0633-0101	01-12	1-2-02	SCR 130	
02-0637-0201	02-1	1-2-02	SCR 130	
11-0501-0102	01-11	1-1-02	SCR 130	
16-0304-0103	01-11	10-1-01 / 5-1-02	SCR 130	
16-0309-0103	01-9	10-1-01	SCR 130	
16-0309-0111	01-10	7-1-01	SCR 130	
16-0309-0201	02-1	12-1-01	SCR 130	

<b>TEMPORARY RULES EXTENDED BY SENATE CONCURRENT RESOLUTION 130</b>			
<b>DOCKET NUMBER</b>	<b>TEMPORARY RULE PUBLICATION - BULLETIN VOL.</b>	<b>TEMPORARY RULE EFFECTIVE DATE</b>	<b>ACTION TAKEN BY CONCURRENT RESOLUTION</b>
16-0311-0101	01-1	7-1-00	SCR 130
16-0319-0101	01-11	7-1-01	SCR 130
16-0319-0102	01-11	7-1-01	SCR 130
16-0322-0101	01-11	7-1-01	SCR 130
16-0323-0101	01-11	10-1-01	SCR 130
16-0411-0101	01-11	10-1-01	SCR 130
16-0417-0101	01-11	10-1-01	SCR 130
16-0503-0101	01-11	10-1-01	SCR 130
16-0506-0201	02-1	1-1-02	SCR 130
16-0601-0101	01-11	7-1-01	SCR 130
16-0612-0101	01-12	11-1-01 / 4-1-02	SCR 130
18-0148-0101	01-6	7-1-01	SCR 130
22-0101-0101	01-11	9-8-01	SCR 130
39-0381-0102	01-12	7-1-01	SCR 130
48-0103-0101	01-11	10-3-01	SCR 130
50-0101-0101	01-11	8-21-01	SCR 130

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this notice, contact Karen Gustafson at (208) 332-1821 or Dennis Stevenson at (208) 332-1822.

DATED this 1st day of April, 2002.

Rick Thompson  
Administrative Rules Coordinator  
P.O. Box 83720  
Boise, ID 83720-0306  
PHONE: (208) 332-1820  
FAX: (208) 334-2395

# HOUSE CONCURRENT RESOLUTION NO. 41

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

IN THE HOUSE OF REPRESENTATIVES  
HOUSE CONCURRENT RESOLUTION NO. 41  
BY REVENUE AND TAXATION COMMITTEE

A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE  
AND REJECTING A CERTAIN RULE OF THE IDAHO STATE TAX COMMISSION  
RELATING TO PRIZES WON IN CONTESTS, DRAWINGS AND RAFFLES.

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

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Idaho State Tax Commission relating to prizes won in contests, drawings and raffles is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 35.01.02, Section 131 and its subsections, a rule of the Idaho State Tax Commission relating to prizes won in contests, drawings and raffles, adopted as a pending rule under Docket Number 35-0102-0102, be, and the same is hereby rejected and declared null, void and of no force and effect.

### Statement of Purpose / Fiscal Impact

#### STATEMENT OF PURPOSE RS 11735

This concurrent resolution would reject a pending rule change of the Idaho State Tax Commission relating to prizes won in contests, drawings and raffles. The effect of this resolution, if adopted by both houses, would be to prevent the agency rule change from going into effect.

#### FISCAL IMPACT

This concurrent resolution has no fiscal impact.

Signed: February 18, 2002

Contact:

Carl Bianchi  
Director of Legislative Services  
334-2475

# HOUSE CONCURRENT RESOLUTION NO. 44

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

IN THE HOUSE OF REPRESENTATIVES  
HOUSE CONCURRENT RESOLUTION NO. 44  
BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE  
AND REJECTING A CERTAIN PROCLAMATION OF RULEMAKING  
OF THE STATE BOARD OF CORRECTION RELATING TO RECORDS  
EXEMPT FROM DISCLOSURE.

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

WHEREAS, all rules of the State Board of Correction are subject to review of the Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code; and WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain proclamation of rulemaking of the State Board of Correction relating to records exempt from disclosure is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 06.01.01, Section 108, Subsection 04.b.vii., a rulemaking of the State Board of Correction relating to records exempt from disclosure, adopted by proclamation and published under Docket Number 06-0101-0103, be, and the same is hereby rejected and declared null, void and of no force and effect.

### Statement of Purpose / Fiscal Impact

#### STATEMENT OF PURPOSE RS 11800

Rules adopted by proclamation by the State Board of Correction are subject to review of the Legislature, and, pursuant to Section 67-5291, Idaho Code, may be rejected where it is determined that the rule violates legislative intent. This concurrent resolution would reject a rule adopted by the State Board of Correction relating to public records exempt from disclosure. The effect of the resolution, if adopted by both houses, would be to prevent the rule from remaining in effect beyond the date the concurrent resolution is adopted.

#### FISCAL NOTE

This concurrent resolution has no fiscal impact.

Signed: March 1, 2002

Contact:  
Carl Bianchi  
Director of Legislative Services  
334-2475

# HOUSE CONCURRENT RESOLUTION NO. 48

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

IN THE HOUSE OF REPRESENTATIVES  
HOUSE CONCURRENT RESOLUTION NO. 48  
BY BUSINESS COMMITTEE

A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE  
AND REJECTING A CERTAIN RULE OF THE IDAHO BOARD OF COSMETOLOGY  
RELATING TO INSTRUCTOR REEXAMINATION.

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

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Idaho Board of Cosmetology relating to instructor reexamination is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 24.04.01, Section 600, Subsection 05.b., a rule of the Idaho Board of Cosmetology relating to instructor reexamination, adopted as a pending rule under Docket number 24-0401-0101, be, and the same is hereby rejected and declared null, void and of no force and effect.

### Statement of Purpose / Fiscal Impact

#### STATEMENT OF PURPOSE RS 11918

This concurrent resolution would reject a pending rule of the Idaho Board of Cosmetology relating to instructor examinations. The effect of this resolution, if adopted by both houses, would be to prevent the agency rule change from going into effect.

#### FISCAL NOTE

This concurrent resolution has no fiscal impact.

Signed: March 8, 2002

Contact:  
Carl Bianchi  
Director of Legislative Services  
334-2475



# SENATE CONCURRENT RESOLUTION NO. 120

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

### IN THE SENATE SENATE CONCURRENT RESOLUTION NO. 120 BY HEALTH AND WELFARE COMMITTEE

#### A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE DEPARTMENT OF HEALTH AND WELFARE RELATING TO CONSTRUCTION AND OPERATION OF PUBLIC SWIMMING POOLS.

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

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Department of Health and Welfare relating to construction and operation of public swimming pools are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 16.02.14, Sections 004, 006, 007, and 010, the entire docket, rules of the Department of Health and Welfare relating to construction and operation of public swimming pools, adopted as pending rules under Docket number 16-0214-0101, be, and the same are hereby rejected and declared null, void and of no force and effect.

#### **Statement of Purpose / Fiscal Impact**

##### STATEMENT OF PURPOSE RS 11834

This concurrent resolution would reject a pending rule change of the state Department of Health and Welfare relating to construction and operation of public swimming pools. The effect of this resolution, if adopted by both houses, would be to prevent the agency rule change from going into effect.

Contact:  
Carl Bianchi  
Director of Legislative Services  
334-2475

Signed: March 12, 2002

##### FISCAL NOTE

This concurrent resolution has no fiscal impact.

# SENATE CONCURRENT RESOLUTION NO. 125

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

### IN THE SENATE SENATE CONCURRENT RESOLUTION NO. 125 BY AGRICULTURAL AFFAIRS COMMITTEE

#### A CONCURRENT RESOLUTION STATING LEGISLATIVE FINDINGS AND APPROVING AND EXTENDING TEMPORARY RULES OF THE IDAHO DEPARTMENT OF AGRICULTURE, WITH EXCEPTIONS.

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

WHEREAS, the Legislature by statute must approve temporary rules by adoption of a concurrent resolution approving the rule if the temporary rule is to remain in effect beyond the end of the current legislative session; and

WHEREAS, the expiration of temporary rules would occasion additional expense to state agencies in readopting and republishing temporary rules needed to conduct state business; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 02.06.16, rules of the Idaho Department of Agriculture relating to crop residue disposal, adopted as temporary rules under Docket Number 02-0616-0101, pursuant to the Administrative Procedure Act and submitted to the Legislature at the Legislature's request through the Office of Rules Coordinator for review during the 2002 legislative session, be, and the same are approved, with the exception of the following enumerated temporary rules sections:

IDAPA 02.06.16, Section 100.03, concerning deadlines for registration; IDAPA 02.06.16, Section 300, Subsections 01 and 02, concerning crop residue burning time frames; and IDAPA 02.06.16, Section 500, Subsections 04 and 05, concerning setbacks from structures and adequate fire suppression equipment.

BE IT FURTHER RESOLVED that the portions of the temporary rule approved by this concurrent resolution shall remain in effect until they expire by their own terms or by operation of law or until they are replaced by a final rule, but in no event shall the rules remain in effect beyond the conclusion of the First Regular Session of the Fifty-seventh Idaho Legislature unless further extended by adoption of a concurrent resolution by both houses of the Legislature.

### Statement of Purpose / Fiscal Impact

#### STATEMENT OF PURPOSE RS 11971

Under Section 67-5226, Idaho Code, temporary rules expire at the end of the legislative session, unless the rule is approved and extended by concurrent resolution adopted by both houses. This concurrent resolution would approve temporary rules adopted by the Idaho Department of Agriculture, with certain exceptions, and extend those portions of the temporary rules that have been approved beyond the end of the 2002 legislative session. If both houses adopt this concurrent resolution, the approved portion of the rules will remain in effect until they expire by their own terms or are replaced by other rules, but in no event will they remain in effect beyond the conclusion of the 2003 legislative session.

Contact:  
Carl Bianchi  
Director of Legislative Services  
334-2475

Signed: February 28, 2002

FISCAL NOTE

This concurrent resolution has no fiscal impact.

# SENATE CONCURRENT RESOLUTION NO. 126

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

### IN THE SENATE SENATE CONCURRENT RESOLUTION NO. 126 BY AGRICULTURAL AFFAIRS COMMITTEE

#### A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE IDAHO DEPARTMENT OF AGRICULTURE RELATING TO GOVERNING ANIMAL INDUSTRY.

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

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Idaho Department of Agriculture relating to governing animal industry are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 02.04.03, Section 388, Subsection 04.b., concerning duration of quarantine and IDAPA 02.04.03, Section 405, subsection 01, concerning penalty for violations, rules of the Idaho Department of Agriculture relating to governing animal industry, adopted as pending rules under Docket Number 02-0403-0001, be, and the same are hereby rejected and declared null, void and of no force and effect.

#### **Statement of Purpose / Fiscal Impact**

##### STATEMENT OF PURPOSE RS 11934

This concurrent resolution would reject pending rules of the Idaho Department of Agriculture governing animal industry. The effect of this resolution, if adopted by both houses, would be to prevent the agency rule change from going into effect.

##### FISCAL NOTE

This concurrent resolution has no fiscal impact.

Signed: February 28, 2002

Contact:  
Carl Bianchi  
Director of Legislative Services  
334-2475

# SENATE CONCURRENT RESOLUTION NO. 130

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

IN THE SENATE  
SENATE CONCURRENT RESOLUTION NO. 130  
BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION STATING LEGISLATIVE FINDINGS  
AND APPROVING AND EXTENDING TEMPORARY RULES  
REVIEWED BY THE LEGISLATURE, WITH AN EXCEPTION.

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

WHEREAS, the Legislature by statute must approve temporary rules by adoption of a concurrent resolution approving the rule if the temporary rule is to remain in effect beyond the end of the current legislative session; and

WHEREAS, the expiration of temporary rules would occasion additional expense to state agencies in readopting and republishing temporary rules needed to conduct state business; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that all temporary rules adopted by state agencies pursuant to the Administrative Procedure Act and submitted to the Legislature at the Legislature's request through the Office of Rules Coordinator for review during the 2002 legislative session, and all temporary rules previously approved and extended by concurrent resolution adopted in a prior regular session of the Idaho Legislature, be, and the same are approved, with the exception of the following enumerated temporary rules section:

IDAPA 02.06.16, the entire rulemaking docket, concerning crop residue disposal, rules of the Idaho Department of Agriculture, adopted as temporary rules under Docket Number 02-0616-0101.

BE IT FURTHER RESOLVED that a temporary rule or partial temporary rule approved by this concurrent resolution shall remain in effect until it expires by its own terms or by operation of law or until it is replaced by a final rule, but in no event shall a temporary rule remain in effect beyond the conclusion of the First Regular Session of the Fifty-seventh Idaho Legislature unless it is further extended by adoption of a concurrent resolution by both houses of the Legislature. Temporary rules or sections of temporary rules which are excepted from approval hereunder or which were not submitted to the Legislature for review during the 2002 legislative session shall expire by operation of statute upon adjournment of the Second Regular Session of the Fifty-sixth Idaho Legislature, unless approved by adoption of a separate concurrent resolution by both houses of the Legislature.

### Statement of Purpose / Fiscal Impact

#### STATEMENT OF PURPOSE RS 12127

Temporary rules adopted by state agencies under the Administrative Procedure Act, by statute expire at the end of the current legislative session. This concurrent resolution would approve and extend agency temporary rules beyond the current session.

#### FISCAL NOTE

Adoption of this concurrent resolution, in and of itself, would have no fiscal impact upon any state or local government funds or accounts. By adopting this concurrent resolution, the Legislature avoids having necessary agency rules expire, which would occasion additional expense to state agencies for readopting and republishing temporary rules needed to conduct state business.

Signed: March 12, 2002

**CONTACT:**

Carl Bianchi  
Director of Legislative Services  
334-2475

# SENATE CONCURRENT RESOLUTION NO. 131

## LEGISLATURE OF THE STATE OF IDAHO Fifty-sixth Legislature - Second Regular Session - 2002

### IN THE SENATE SENATE CONCURRENT RESOLUTION NO. 131 BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION STATING LEGISLATIVE FINDINGS AND APPROVING ADMINISTRATIVE RULES THAT IMPOSE A FEE OR CHARGE, WITH AN EXCEPTION, AND REJECTING CERTAIN AGENCY RULES THAT ARE NOT APPROVED.

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

WHEREAS, the Legislature pursuant to Section 67-5224, Idaho Code, must approve certain administrative rules that impose a fee or charge by adoption of a concurrent resolution before the rules become effective; and

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the State Board of Morticians relating to reinstatement and annual renewal fees is not consistent with legislative intent; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that all pending administrative rules or portions of pending administrative rules adopted by state agencies pursuant to the Administrative Procedure Act during the prior calendar year, and submitted through the Office of Rules Coordinator to the Legislature for review during the 2002 legislative session, which impose a fee or charge, be, and the same are approved, with the exception of the following enumerated pending fee rule:

IDAPA 24.08.01, Section 500, Subsection 07, Rules of the State Board of Morticians relating to reinstatement and annual renewal fees for back years, adopted as a pending fee rule under Docket Number 24-0801-0101; and

BE IT FURTHER RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 24.08.01, Section 500, Subsection 07, Rules of the State Board of Morticians relating to reinstatement and annual renewal fees, adopted as a pending fee rule under Docket Number 24-0801-0101 be, and the same is hereby rejected and not approved and thereby pursuant to Sections 67-5291 and 67-5224, Idaho Code, is declared null, void and of no force and effect.

BE IT FURTHER RESOLVED by the members of the Second Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that rule provisions imposing fees or charges that were not submitted through the Office of Rules Coordinator for legislative review or that otherwise are not included and approved in this concurrent resolution shall be null, void and of no force and effect unless approved by adoption of a separate concurrent resolution by both houses of the Legislature as provided in Section 67-5224, Idaho Code.

### Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE  
RS 12128

By statute, agency rules adopted under the Administrative Procedure Act that impose a fee or charge do not go into effect unless approved by concurrent resolution by both houses of the legislature. This concurrent resolution would approve agency fee or charge rules that have been adopted during the last calendar year, and which were submitted through the Office of the Rules Coordinator to the legislature for review during the current legislative session, with exceptions for those fee rules that were not approved by one committee that reviewed them.

FISCAL NOTE

Adoption of this concurrent resolution, in and of itself, would have no fiscal impact upon any state or local government funds, beyond the scope or impact of the individual rules themselves.

Signed: March 13, 2002

CONTACT:

Carl Bianchi  
Director of Legislative Services  
334-2475



## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL INDUSTRY

#### DOCKET NO. 02-0403-0001

#### NOTICE OF RULEMAKING - FINAL RULE

**EFFECTIVE DATE:** The effective date of Senate Concurrent Resolution 126 is February 28, 2002.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 02-0403-0001. This agency action for this final rulemaking is authorized pursuant to Section(s) 22-101 and 25-3704, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the proposed rule and text of the final rule with an explanation for any changes.

Pursuant to Senate Concurrent Resolution No. 126, Docket No. 02-0403-0001 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following changes are being made to the final rule: Subsection 388.04.b. and Subsection 405.01, are rejected and are being deleted from the final rule. In accordance with discussions before the germane committees of the legislature, the Idaho State Department of Agriculture will publish concurrently with this Notice of Final Rulemaking, a Notice of Temporary Rulemaking, under Docket No. 02-0403-0201, to rewrite the rejected sections and subsections of Docket No. 02-0403-0001.

The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 00-10, October 4, 2000, pages 32 through 58. The text of the pending rule the amended temporary rule was published in the Idaho Administrative Bulletin, Volume 01-8, August 1, 2001, pages 22 through 34.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Dr. Phillip Mamer or John Chatburn, Idaho State Department of Agriculture at (208) 332-8540.

DATED this 20th day of March, 2002.

Mike Everett, Deputy Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
PO Box 790  
Boise, ID 83701-0790  
Phone No. (208) 332-8540  
Fax No. (208) 334-4062

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#### THE FOLLOWING IS THE TEXT OF THE FINAL RULE AS AMENDED BY SCR 126

#### **388. DURATION OF QUARANTINE.**

Quarantines imposed in accordance with this chapter shall remain in effect until one (1) of the following criteria is met: (2-28-02)

**01. Source Herds And Herds Of Origin.** The quarantine may be released after a minimum of five (5) years of compliance with all provisions of these rules, during which there was no evidence of CWD or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the

source of infection as determined by the administrator. (2-28-02)

**02. Herds Having Contact With Affected Or Exposed Animals.** The quarantine may be released after a minimum of five (5) years of compliance with all provisions of these rules and during which there was no evidence of CWD or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the administrator. (2-28-02)

**03. Adjacent Herds.** As directed by the Administrator in consultation with the epidemiologist. (2-28-02)

**04. Quarantine May Be Released After Complete Depopulation.** The quarantine may be released after:

a. Complete depopulation of all cervidae on the premises in accordance with Section 25-212, Idaho Code; (2-28-02)

~~b. The premises has been free of all ungulates for at least five (5) years;~~ (8-1-01)F

~~e.b.~~ The soil and facilities have been treated or disinfected as recommended by the administrator; and (2-28-02)

~~d.c.~~ The premises is repopulated in complete compliance with the MCCWDMP. (2-28-02)

**05. Nonparticipating Herds.** Nonparticipating herds will be placed and held under quarantine until the herd has qualified for and has been enrolled in either the MCCWDMP or VCCWDMP for five years. (2-28-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. PENALTY FOR VIOLATIONS.**

Pursuant to the provisions of Title 25, Section 3706, Idaho Code, the following penalties are authorized: (2-28-02)

~~**01. Civil Penalty.** Any person violating the provisions of Title 25, Chapters 2, 3, 4, and 6, Idaho Code, applicable to domestic cervidae, or these rules may be assessed a civil penalty by the department or its duly authorized agent not to exceed five thousand dollars (\$5,000) for each offense. Each day of a continuing violation may be assessed as a separate offense.~~ (8-1-01)F

~~a. Civil penalties may be assessed in conjunction with any other department administrative action. No civil penalty may be assessed against a person unless the person was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act as set forth in Chapter 52, Title 67, Idaho Code. If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action.~~ (8-1-01)F

~~b. A person against whom the department has assessed a civil penalty under these rules may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred.~~ (8-1-01)F

~~e. Moneys collected pursuant to these rules shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund.~~ (8-1-01)F

~~d. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other~~

*matters as justice requires.*

~~(8-1-01)F~~

**021. Criminal Penalty.** Any person, firm, or corporation violating any of the provisions of Title 25, Chapters 2, 3, 4, and 6 or [37] 35, Idaho Code, applicable to domestic cervidae, or these rules shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) for each offense. (2-28-02)

**032. Minor Violations.** Nothing in these rules shall be construed as requiring the director to report minor violations when the director believes that the public interest will be best served by suitable warnings or other administrative action. (2-28-02)

## IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

### 02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL INDUSTRY

DOCKET NO. 02-0403-0201

#### NOTICE OF RULEMAKING - TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is May 15, 2002.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 22-101 and 25-3704, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of the supporting reasons for temporary rulemaking: this temporary rule rewrites sections of Docket 02-0403-0001 that were rejected by SCR 126 in accordance with discussions before the germane committees.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1) sections (a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: it is necessary to protect the public health, safety, or welfare; and compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact John Chatburn, Idaho State Department of Agriculture at (208) 332-8540.

DATED this 20th day of March, 2002.

Mike Everett, Deputy Director  
Idaho State Department of Agriculture  
P.O. Box 790, Boise, Idaho 83701-0790  
(208) 332-8540 / (208) 334-4062 FAX

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0403-0201

##### **388. DURATION OF QUARANTINE.**

Quarantines imposed in accordance with this chapter shall remain in effect until one (1) of the following criteria is met: (2-28-02)

**01. Source Herds And Herds Of Origin.** The quarantine may be released after a minimum of five (5) years of compliance with all provisions of these rules, during which there was no evidence of CWD or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the administrator. (2-28-02)

**02. Herds Having Contact With Affected Or Exposed Animals.** The quarantine may be released after a minimum of five (5) years of compliance with all provisions of these rules and during which there was no evidence of CWD or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the administrator. (2-28-02)

**03. Adjacent Herds.** As directed by the Administrator in consultation with the epidemiologist. (2-28-02)

- after: **04. Quarantine May Be Released After Complete Depopulation.** The quarantine may be released (2-28-02)
- Code; a. Complete depopulation of all cervidae on the premises in accordance with Section 25-212, Idaho (2-28-02)
- b. The soil and facilities have been treated or disinfected as recommended by the administrator; and (2-28-02)
- c. The premises is repopulated in complete compliance with the MCCWDMP. (2-28-02)
- years; d. The premises has been free of all ungulates for at least one (1) year and cervidae for at least five (5) (5-15-02)T
- 05. Nonparticipating Herds.** Nonparticipating herds will be placed and held under quarantine until the herd has qualified for and has been enrolled in either the MCCWDMP or VCCWDMP for five years. (2-28-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**405. PENALTY FOR VIOLATIONS.**

Pursuant to the provisions of Title 25, Section 3706, Idaho Code, the following penalties are authorized: (2-28-02)

**01. Civil Penalty.** Any person violating the provisions of Title 25, Chapters 2, 3, 4, and 6, Idaho Code, applicable to domestic cervidae, or these rules may be assessed a civil penalty by the department or its duly authorized agent not to exceed five thousand dollars (\$5,000) for each offense. (5-15-02)T

a. Civil penalties may be assessed in conjunction with any other department administrative action. No civil penalty may be assessed against a person unless the person was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act as set forth in Chapter 52, Title 67, Idaho Code. If the department is unable to collect an assessed civil penalty, or if a person fails to pay all or a set portion of an assessed civil penalty as determined by the department, the department may file an action to recover the civil penalty in the district court of the county in which the violation is alleged to have occurred. In addition to the assessed penalty, the department shall be entitled to recover reasonable attorney's fees and costs incurred in such action or on appeal from such action. (5-15-02)T

b. A person against whom the department has assessed a civil penalty under these rules may, within thirty (30) days of the final agency action making the assessment, appeal the assessment to the district court of the county in which the violation is alleged to have occurred. (5-15-02)T

c. Moneys collected pursuant to these rules shall be deposited in the state treasury and credited to the livestock disease control and T.B. indemnity fund. (5-15-02)T

d. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (5-15-02)T

**02. Criminal Penalty.** Any person, firm, or corporation violating any of the provisions of Title 25, Chapters 2, 3, 4, and 6 or [37] 35, Idaho Code, applicable to domestic cervidae, or these rules shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) and not more than five thousand dollars (\$5,000) for each offense. (2-28-02)

**023. Minor Violations.** Nothing in these rules shall be construed as requiring the director to report minor violations when the director believes that the public interest will be best served by suitable warnings or other administrative action. (2-28-02)

## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

### 16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED, BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 56-1004(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the proposed rules:

This rule eliminates State cash assistance for some residents of Residential and Assisted Living Facilities and Certified Family Homes. Instead of State cash assistance, Medicaid Personal Care Services will pay for care for these individuals. Some residents will continue to receive State cash assistance at a reduced rate if their income is too low to pay the facility for the cost of rent, utilities and food provided by the facility and not reimbursed by Medicaid.

This rule will update terminology used for Medicaid eligibility for Aged and Disabled waiver services provided in a setting other than the individual's own home.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

In February 2002, the Board of Health and Welfare adopted this rule as a temporary rule with an effective date of December 1, 2001 and January 1, 2002. The temporary rule was published in the Idaho Administrative Bulletin, Volume 02-2, February 6, 2002, pages 18 through 23. With this publication the Department is initiating proposed rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made in order to comply with amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning these proposed rules, contact Patti Campbell at (208) 334-5818.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before May 22, 2002.

DATED this 21st day of March, 2002.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW - Legal Services Division  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

Pursuant to Section 67-5221(1) this Proposed Rule is being published in this Bulletin.  
This docket was previously published as a Temporary Rule.

The temporary effective date is December 1, 2001 and January 1, 2002.

The text of the Temporary Rule was published in the Idaho Administrative  
Bulletin, Volume 02-2, February 6, 2002, pages 18 through 23.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0201**

**319. CONTRIBUTIONS FOR RESIDENTIAL AND ASSISTED LIVING FACILITY RESIDENTS.**

Contributions from a third party, for a participant residing in a ~~Residential and Assisted Living Facility~~, are excluded. The contribution must be paid directly to the facility. The contribution must pay for items or services, ~~other than medical care~~, provided to the participant by the facility. The items or services must not be included in the participant's ~~AABD cash~~ State Plan Personal Care Services or his Personal Care Supplement or must be charges for ~~care rent, utilities, or food~~ exceeding the ~~Department's Residential and Assisted Living Facility Level I, II or III Personal Care Supplement~~ Allowance. The participant must not be charged a higher rate than other residents of the facility. The person making the contribution must provide a signed statement identifying the item or service the payment covers, the reason the item or service is needed by the participant, and the monthly amount of the payment. (4-5-00)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**501. BASIC ALLOWANCE.**

Each participant receives a basic allowance unless he lives in a nursing facility. The basic allowance for each living arrangement is listed in Subsections 501.01 through 501.04~~5~~. The Semi-Independent Group Residential Facility, Room and Board, Residential and Assisted Living Facility and Certified Family Home basic allowances are those in effect January 1, 2001. They do not change with the annual cost-of-living increase in the federal SSI benefit amount. (1-1-01)F( )

**01. Single Participant.** Through December 31, 2000, a participant is budgeted five hundred forty-five dollars (\$545) monthly as a basic allowance when living in a situation described in Subsections 501.01.a. through 501.01.e. Beginning January 1, 2001, the basic allowance increase for a single participant is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. (3-30-01)

- a. Living alone. (7-1-99)
- b. Living with his ineligible spouse. (7-1-99)
- c. Living with another participant who is not his spouse. (7-1-99)
- d. Living in another's household. This includes a living arrangement where the participant purchases lodging (room) and meals (board) from his parent, child or sibling. (3-30-01)
- e. Living with his TAFI child. (7-1-99)

**02. Couple Or Participant Living With Essential Person.** Through December 31, 2000, a participant living with his participant spouse or his essential person is budgeted seven hundred sixty-eight dollars (\$768) monthly as a basic allowance. Beginning January 1, 2001, the basic allowance increase for a couple is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a couple. The increase may be rounded

up. (3-30-01)

**03. SIGRIF.** A participant living in a semi-independent group residential facility (SIGRIF) is budgeted three hundred forty-nine dollars (\$349) monthly as a basic allowance. (7-1-99)

**04. Room And Board Home.** A participant living in a room and board home, as defined in Section 512, is budgeted sixty-seven dollars (\$67) monthly as a basic allowance. (3-15-02)

**05. Personal Care Supplement.** A participant living in a Residential and Assisted Living Facility, or Certified Family Home with state plan personal care services, is budgeted five hundred and twenty dollars (\$520) monthly as a Basic Allowance, if he does not have enough income to pay his provider for his rent, utilities and food. To receive a Personal Care Supplement, the participant's income after exclusions and disregards must be less than his Basic Allowance. Beginning January 1, 2003, the basic allowance increase is the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**513. LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY AND CERTIFIED FAMILY HOME ALLOWANCES.**

~~Each~~ A participant living in a ~~Residential and Assisted Living Facility~~ (RALF), (see IDAPA 16.03.22, "Rules Governing Licensed Residential and Assisted Living Facilities in Idaho") or ~~Certified Family Home~~ (CFH), (see IDAPA 16.03.19, "Rules Governing Certified Family Homes") with State Plan Personal Care Services, is budgeted a basic allowance of sixty-seven dollars (\$67) monthly. A participant is also budgeted a monthly allowance for care based on his level of care. If the participant gets a lower level of RALF or CFH care than his assessed level, his allowance is for the lower level of care. These allowances are used to determine eligibility for Medicaid. The participant is not entitled to AABD cash assistance, unless he is entitled to the Personal Care Supplement in Subsection 512.05 of these rules. If the participant does not require the RALF or CFH level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. A participant with Home and Community-Based Services for the aged and disabled (HCBS-A&D) is not entitled to cash assistance.

~~(7-1-01)F( )~~

**01. Care Levels And Monthly Allowances.** Through December 31, 2000, care levels and monthly allowances are those listed in Table 513. Beginning January 1, 2001, through December 31, 2001, the RALF and CFH care allowances and the basic allowance increase by one-half (1/2) the dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person. Beginning January 1, 2002, the RALF and CFH allowances increase by the full dollar amount of the annual cost-of-living increase in the federal SSI benefit rate for a single person.

TABLE 513 - CARE LEVELS AND ALLOWANCES AS OF 12-31-00		
	Level Of Care	Monthly Allowance
a.	Level I	Seven hundred and seventy-four dollars (\$774)
b.	Level II	Eight hundred and forty-one dollars (\$841)
c.	Level III	Nine hundred and nine dollars (\$909)

(3-15-02)

**02. CFH Operated By Relative.** A participant living in a Certified Family Home (CFH) operated by his parent, child or sibling is not entitled to the CFH allowances. He may receive the allowance for a person living with a relative. A relative for this purpose is the participant's parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent or grandchild by birth, marriage, or adoption. (3-15-02)

~~**03. RALF Participant In RALF Not On A&D Waiver.** A participant living in a RALF and receiving~~



~~personal care services, but not A&D Waiver services, gets the same allowances as a participant in room and board with a non-relative. (7-1-01)F~~

**514. RESIDENTIAL AND ASSISTED LIVING FACILITY CARE AND CERTIFIED FAMILY HOME ASSESSMENT AND LEVEL OF CARE.**

The participant's need for care, level of care, plan of care, and the licensed facility's ability to provide care is assessed by the Regional ~~Adult Residential Care Committee (ARCC)~~ Medicaid Services (RMS) when a participant is admitted. The ~~ARCC RMS~~ must approve the placement before ~~AABD cash~~ Medicaid can be approved or a Personal Care Supplement can be paid. (4-5-00)(\_\_\_\_)

**515. ~~INCREASE~~ CHANGE IN LEVEL OF CARE.**

A change in the participant's level of care affects eligibility as described in Subsections 515.01 and 515.02. (\_\_\_\_)

**01. Increase In Level Of Care.** An increase in level of care is effective the month the ~~ARCC RMS~~ reassesses the level of care. ~~The participant's supplemental AABD cash is the difference between his AABD cash at the lower level of care and his AABD cash at the higher level of care.~~ (7-1-99)(\_\_\_\_)

**516. ~~DECREASE IN LEVEL OF CARE.~~**

**02. Decrease In Level Of Care.** When the ~~ARCC RMS~~ verifies the participant has a decrease in his level of care, ~~his AABD cash must be decreased or closed, after timely notice. No overpayment exists for the month the level of care decreased~~ and his income exceeds his new level of care, ~~his Medicaid must be stopped after timely notice. When the RMS determines the participant no longer meets any level of care, his eligibility and allowances are based on the Room and Board rate in Section 512 of these rules. He can receive AABD cash.~~ (7-1-99)(\_\_\_\_)

**517~~6~~. -- 520. (RESERVED).**

**521. MOVE FROM LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME TO LIVING SITUATION OTHER THAN A NURSING HOME OR HOSPITAL.**

A participant may move from a licensed facility to a living situation, other than a nursing home or hospital. No change to his ~~AABD cash~~ Medicaid income limit is made, based on the move, until the next month. (4-5-00)(\_\_\_\_)

**522. MOVE TO A RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME FROM NURSING HOME OR HOSPITAL.**

A participant may move to a ~~r~~Residential and ~~a~~Assisted ~~l~~iving ~~f~~acility or ~~e~~Certified ~~f~~amily ~~h~~ome from a nursing home or hospital. ~~AABD eligibility, payment amount and underpayment are determined~~ The participant may be eligible for a Personal Care Supplement for the month of the move. Determine eligibility for, and the amount of the supplement, using Table 522.

<b>TABLE 522 - <del>COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVING FROM NURSING HOME OR HOSPITAL</del></b>		
<b><u>PERSONAL CARE SUPPLEMENT</u></b>		
<b>Step</b>	<b>Procedure</b>	
<b>01. Step 1</b>	<del>Divide the participant's monthly RALF or CFH allowance by thirty (30). Do not exceed the maximum allowance. Determine the participant's countable income, for the month of the move, by subtracting applicable income exclusions and disregards.</del>	
<b>02. Step 2</b>	<del>Multiply the result by the number of days left in the month. Begin with the day after the day nursing home or hospital care stopped. Use this amount to compute AABD cash in the RALF or CFH. Income already used to meet patient liability in the nursing home is not counted against AABD cash for the month of the move. Subtract income used to meet patient liability in the nursing home for the month of the move.</del>	

<b>TABLE 522 - <del>COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVING FROM NURSING HOME OR HOSPITAL</del></b> <b><u>PERSONAL CARE SUPPLEMENT</u></b>		
	<b>Step</b>	<b>Procedure</b>
<del>03.</del>	<b>Step 3</b>	<del>Subtract the nursing home personal needs allowance from the participant's countable income. Subtract the nursing home personal needs allowance from the income remaining after Step 1. Use this income to determine the amount of the Personal Care Supplement in Subsection 501.05 of these rules.</del>
<del>04.</del>	<b>Step 4</b>	<del>Multiply the participant's daily rate for nursing home care by the number of days in the month he got nursing home care.</del>
<del>05.</del>	<b>Step 5</b>	<del>Subtract this amount from the remaining income.</del>
<del>06.</del>	<b>Step 6</b>	<del>Use the remaining income to compute AABD cash in the RALF or CFH for the month of the move.</del>

(4-5-00)( )

523. **~~(RESERVED). MOVE TO A LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME FROM LIVING SITUATION OTHER THAN NURSING HOME OR HOSPITAL.~~**  
A participant may move to a residential and assisted living facility (RALF) or certified family home (CFH) from a different living situation, other than a nursing home or hospital. The AABD underpayment is determined for the month of the move using Table 523.

<b>TABLE 523 - <del>COMPUTING RESIDENTIAL AND ASSISTED LIVING FACILITY OR CERTIFIED FAMILY HOME UNDERPAYMENT AFTER MOVE FROM OTHER LIVING SITUATION</del></b>		
	<b>Step</b>	<b>Procedure</b>
<del>01.</del>	<b>Step 1</b>	<del>Divide the participant's monthly RALF or CFH allowance by thirty (30). Do not exceed the maximum allowance.</del>
<del>02.</del>	<b>Step 2</b>	<del>Multiply the result by the number of days left in the month. Begin with the day after the day the participant moved from the other living situation. Use this amount to compute AABD cash in the RALF or CFH.</del>
<del>03.</del>	<b>Step 3</b>	<del>Any remainder is the participant's AABD cash underpayment for the month of the move. The remainder is rounded to the next higher dollar, if not an even dollar.</del>

(4-5-00)

**(BREAK IN CONTINUITY OF SECTIONS)**

525. **~~CHOICE BETWEEN AABD CASH AND HCBS-NF WAIVER SERVICES.~~**

A participant eligible for AABD cash in a Certified Family Home or Residential and Assisted Living Facility and also eligible for services under the HCBS-NF waiver, must chose between AABD cash and waiver services. The participant must not receive AABD cash and waiver services during the same month. (1-1-01)F

526~~5~~. -- 530. **(RESERVED).**

**(BREAK IN CONTINUITY OF SECTIONS)**

**787. PERSON ENTITLED TO HOME AND COMMUNITY BASED SERVICES (HCBS).**

An aged, blind or disabled person not eligible for SSI or AABD cash in his own home, because of income deeming or income limits, is eligible for Medicaid if he meets the conditions in Subsections 787.01 through 787.12. (7-1-99)

- 01. Age.** Is at least eighteen (18) years old. (4-5-00)
- 02. AABD Criteria.** If under age sixty-five (65), meets the AABD blindness or disability criteria. (7-1-99)
- 03. AABD Resource Limit.** Meets the AABD single person resource limit. (7-1-99)
- 04. HCBS Income Limit.** For the HCBS Aged and Disabled (A&D) waiver, has income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. For the HCBS Developmentally Disabled (DD) waiver, has income not exceeding three (3) times the Federal SSI benefit payable monthly to a single person. (3-15-02)
- 05. Eligible For Long Term Care.** For HCBS-A&D, meets the medical conditions for nursing facility care in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Subsection 160.09. For HCBS-DD, meets the medical conditions for ICF/MR care in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 143. (3-30-01)
- 06. Home Care Maintained In The Community.** For HCBS-A&D, can be maintained in ~~his own home~~ the community with ~~Personal Care~~ A&D waiver ~~services (PCS)~~ furnished under the Department's HCBS waiver. For HCBS-DD, can be maintained in the community with DD waiver services. (~~3-30-01~~)( )
- 07. Cost Of Care.** For HCBS-A&D, can be cared for ~~at home~~ in the community at a cost not to exceed the statewide average cost of care for the participant's level of care. The estimated cost of care in a nursing facility is the statewide average rate for the level of care the participant requires, charged by the type of facility where he would be placed if he were not living at home. For traumatic brain injury patients, the estimated cost of care is at the nursing facility special rate. (~~3-30-01~~)( )
- 08. Care Requirement.** For HCBS-A&D, must require and receive, or be likely to require and receive, HCBS-A&D waiver ~~personal care~~ services for thirty (30) consecutive days. For HCBS-DD, must require and receive, or be likely to require and receive, HCBS-DD waiver services for thirty (30) consecutive days. (~~3-30-01~~)( )
- 09. Effective Date.** Medicaid is effective the first day of the thirty (30) day period the participant is likely to require HCBS A&D or HCBS-DD waiver services. (3-30-01)
- 10. Participant With Spouse.** A married participant living at home with his spouse who is not and HCBS participant, can choose between the SSI, CP, and FSI methods. If his spouse is also an HCBS participant or lives in a nursing home, the couple can choose between the SSI and CP methods. (7-1-99)
- 11. Continued Services.** The participant must continue to require and receive waiver services. The participant is ineligible when there is a lapse in need for or receipt of waiver services for thirty (30) days. (7-1-99)
- 12. Annual Limit.** A participant who applies for HCBS Medicaid, after the annual limit on HCBS-A&D or HCBS-DD waiver participants is reached, must be denied Medicaid. (3-30-01)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**  
**DOCKET NO. 16-0309-0111**  
**NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE**

**AUTHORITY:** In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has rescinded the rulemaking previously initiated under this docket. The action is authorized pursuant to Section(s) 56-202(b), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a summary of the reasons for the rescission of the temporary rule:

The temporary amendments made in this rulemaking have been replaced by amendments made in Docket No. 16-0309-0109, which became final and effective at the end of the Legislative Session on March 15, 2002.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rescission of temporary rule, contact Jack Weinberg at (208) 334-5795.

DATED this 19th day of March, 2002.

Sherri Kovach  
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DHW - Division of Legal Services  
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**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0202**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the proposed rules:

A consistent Medicaid reimbursement methodology for commercial non-emergency transportation providers was implemented January 1, 2002. The Department attempted to involve stakeholders in the development of reimbursement methodology by requesting operating cost data from existing commercial non-emergency Medicaid transportation providers in Idaho. The amount of data returned to the Department from providers was insufficient to develop an accurate rate. The Department then sampled commercial rates from around the state to arrive at a dollar amount which reflected the industry norm in Idaho, and a methodology using a base rate plus a per mile reimbursement was finalized.

Individual, non-commercial, non-emergency transportation providers use their own private vehicles to transport Medicaid clients for medical and non-medical (waiver) activities. Reimbursement will decrease from the amount reimbursed to state employees using their personal vehicles on state business, to a maximum of five (5) passengers per vehicle, to a rate established by the Department for actual vehicle mileage regardless of how many Medicaid clients are being transported in the vehicle at the same time.

Reimbursement for meals was written in rule as "shall not exceed the amount allowed for state employees in travel status". Meal reimbursement will decrease to a rate established by the Department.

In February 2002, the Board of Health and Welfare adopted this rule as a temporary rule with an effective date of January 1, 2002. The temporary rule was published in the Idaho Administrative Bulletin, Volume 02-2, February 6, 2002, pages 26 through 28. With this publication the Department is initiating proposed rulemaking.

The proposed rule text is in legislative format. Language the agency proposes to add is underline. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made in order to comply with amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning these proposed rules, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before May 22, 2002.

DATED this 11th day of March, 2002.

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**Pursuant to Section 67-5221(1) this Proposed Rule is being published in this Bulletin.  
This docket was previously published as a Temporary Rule.**

**The temporary effective date is January 1, 2002.**

**The text of the Temporary Rule was published in the Idaho Administrative  
Bulletin, Volume 02-2, February 6, 2002, pages 26 through 28.**

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0202**

**151. NON-EMERGENCY TRANSPORTATION.**

**01. General Coverage For Non-Emergency Transportation.** Non-emergency transportation is all transportation that is not of an emergency nature, including non-medical transportation under waiver programs. An emergency is a condition described in Subsection 150.01.e. Medicaid will reimburse non-emergency transportation by commercial or non-commercial transportation providers under the following circumstances and limitations: (3-15-02)

a. The travel is essential to get to or from a medically necessary service or a waiver service covered by Medicaid; and (3-15-02)

b. The person for whom services are billed is actually transported for all the distance billed; and (3-15-02)

c. The mode of transportation is the lowest in cost to the Medicaid program that is appropriate to the medical needs of the client; and (3-15-02)

d. The transportation is to the nearest medical or waiver service provider appropriate to perform the needed services, and transportation is by the most direct route practicable. Reimbursement will be limited to the distance of the most direct route practicable; and (3-15-02)

e. Other modes of transportation, including personal vehicle, assistance by family, friends and charitable organizations, are unavailable or impractical under the circumstances; and (3-15-02)

f. The travel is authorized by the Department prior to the transportation; and (3-15-02)

g. Authorization for the travel is requested from the Department at least twenty-four (24) hours in

advance of the travel to the medical appointment or waiver service excluding Saturdays, Sundays, and state holidays; and (3-15-02)

- h. The transporter has completed and signed a current Medicaid provider agreement; and (3-15-02)
- i. Travel is not covered by the service to which the client is being transported; and (3-15-02)
- j. Transportation is paid on a reimbursement basis only; payment will not be issued prior to delivery of the service. (3-15-02)

**02. Exceptions.** Despite the preceding rules, Medicaid will cover transportation services under the following circumstances: (3-15-02)

a. Transportation services may be retroactively approved when a client is found retroactively eligible, the transportation service falls within the period of retroactive eligibility, and the transporter was a Medicaid transportation provider at the time of the transport for which reimbursement is sought. (3-15-02)

b. If the trip distance is less than twenty-one (21) miles, prior approval for non-commercial non waiver transport is not necessary. For Subsection 151.02, a trip is the distance a transporter carries a client in the course of a day. Therefore, the total mileage of a round-trip transport that takes place within one (1) day will be considered in determining whether this exception applies. Even though prior approval is not required, the transporter shall maintain all records as described in Subsection 152.02.d. of these rules. This exception is not available to commercial providers. (~~3-15-02~~)(\_\_\_\_)

c. Reimbursement for non-commercial transportation will be limited as required by Section 56-227E, Idaho Code, and as expressed in Subsection 152.02.b. (3-15-02)

**03. Services Incidental To Travel.** Medicaid will reimburse for the reasonable cost actually incurred of meals, lodging, a personal assistant and other necessary services incidental to travel, only under the following conditions: (3-15-02)

a. Approval of the service is requested from the Department at least twenty-four (24) hours in advance of the travel. Excluding Saturdays, Sundays, and state holidays. (3-15-02)

b. The reasonable cost of meals actually incurred in transit will be approved when necessary, when there is no other practical means of obtaining food, and only when an overnight stay is required to receive the service. Reimbursement shall not exceed ~~the amount allowed for state employees in travel status. The Idaho State Travel and Procedures of the Idaho State Board of Examiners, Appendices are incorporated by reference in this chapter~~ seven dollars (\$7) per meal or a maximum of twenty-one dollars (\$21) per day per person. (~~3-15-02~~)(\_\_\_\_)

c. The reasonable cost actually incurred for lodging will be approved when the round trip and the needed medical service, in practicality, can not be completed in the same day. The travel must entail a one (1) way distance of at least two hundred (200) miles, or a normal one (1) way travel time of at least four (4) hours. The incidental travel expenses of a family member or other companion will be covered when medical necessity or the vulnerability of the individual requires accompaniment for safety, and no less-costly alternative is available. Lodging reimbursement will not be paid when the stay is in the home of a relative or acquaintance. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**153. REIMBURSEMENT RATES.**

**01. Commercial Transportation.** ~~Payment shall be at the rate charged by the provider to a third party with billing requirements comparable to the Medicaid program or, if there is no comparable third party, at the rate charged to the general public plus a reasonable administrative charge. The provider must demonstrate that the~~

~~administrative charge is an amount proportional to the additional administrative costs attributable to providing services to Medicaid clients. A statewide uniform payment rate shall be established through a study conducted no less frequently than each third year, that evaluates the actual charges of, and costs reasonably incurred by the typical commercial transportation provider, together with the reasonable administrative costs incurred by the typical provider in keeping records for Medicaid-related transportation and billing the Department.~~ (3-15-02)( )

**02. Non-Commercial Providers -- Agency And Individual.** ~~Payment for each Medicaid passenger shall be at the rate, rounded up to the nearest whole cent, the Idaho Board of Examiners will reimburse state employees to use their personal vehicles on state business, to a maximum of five (5) passengers per trip or leg of a trip.~~ (3-15-02)( )

a. Agency Provider Reimbursement. A statewide uniform payment rate shall be established through a study conducted no less frequently than each third year, that evaluates the actual costs reasonably incurred by the typical agency transportation provider, together with the reasonable administrative costs incurred by the typical agency transportation provider in keeping records for Medicaid-related transportation and billing the Department. ( )

b. Individual Provider Reimbursement. A uniform payment rate shall be established through a study conducted no less frequently than each third year, that evaluates the actual costs of fuel reasonably incurred by the typical non-commercial transportation provider whose personal vehicle averages fifteen (15) miles per gallon. ( )



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0203**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the proposed rules:

Medicaid will cover up to four (4) covered drugs and pharmacy items per calendar month for eligible adults after the month of their 21st birthday. Covered drugs and pharmacy items in excess of four (4) per calendar month will not be covered by Medicaid unless prior authorized by the Department. Medicaid recipients shall be responsible for prescription charges for drugs and pharmacy items which exceed four (4) per calendar month and which have not been prior authorized by the Department.

In February 2002, the Board of Health and Welfare adopted this rule as a temporary rule with an effective date of March 1, 2002. The temporary rule was published in the Idaho Administrative Bulletin, Volume 02-2, February 6, 2002, pages 29 and 30. With this publication the Department is initiating proposed rulemaking.

The proposed rule text is in legislative format. Language the agency proposes to add is underline. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made in order to comply with amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning these proposed rules, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before May 22, 2002.

DATED this 11th day of March, 2002.

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Pursuant to Section 67-5221(1) this Proposed Rule is being published in this Bulletin.  
This docket was previously published as a Temporary Rule.

The temporary effective date is March 1, 2002.

The original text of the Temporary Rule was published in the Idaho Administrative  
Bulletin, Volume 02-2, February 6, 2002, pages 29 and 30.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0203

**808. COVERAGE.**

The Medicaid program will cover, without prior authorization, up to four (4) covered drugs and pharmacy items per calendar month for eligible adults, beginning the calendar month following their twenty-first birthday. In addition to those items listed in Subsection 812.03 in these rules, covered drugs and pharmacy items in excess of four (4) per calendar month must be prior authorized by the Department. The request for prior authorization of each covered drug or pharmacy item in excess of four (4) per month shall follow the process set forth in Subsection 812.03 in these rules. ( )

~~808.~~—809. (RESERVED).

**810. FINANCIAL OBLIGATIONS OF RECIPIENTS.**

Recipients shall be responsible for prescription charges if: (4-5-00)

**01. Day's Supply.** The day's supply obtained exceeds the Department's allowable amount (recipient pays the cost of the additional medication). (4-5-00)

**02. Drugs Not Covered.** The drugs are not covered by the Medicaid Drug Program (recipient pays the entire cost). (4-5-00)

**03. Brand Name Drugs.** The recipient will only accept a brand name product which is part of the FUL (federal upper limit) or SMAC (state maximum allowable cost) listing and the physician has not specified the brand name drug to be medically necessary (recipient pays the entire cost). (4-5-00)

**04. Medication For Multiple Persons.** When the medication is for more than one (1) person and the second person is not covered under Medicaid (recipient pays the cost of the non-covered person's portion). (4-5-00)

**05. No Prior Authorization.** The covered drug or pharmacy item has not received prior authorization for Medicaid payment as required in Section 808 or Subsection 812.03 in these rules. ( )

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0204**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective January 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** This rule change would allow the Division of Medicaid to pursue medical support costs from Absent Parents who have been court ordered to pay medical support for his/her child. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with the changes in governing law and federal programs.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made in order to comply with amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Sharon Duncan at (208) 334-5760.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before May 22, 2002.

DATED this 11th day of March, 2002.

Sherri Kovach, Administrative Procedures Coordinator  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0204**

**030. THIRD PARTY LIABILITY.**

**01. Determining Liability Of Third Parties.** The Department will take reasonable measures to determine any legal liability of third parties for the medical care and services included under the MA Program, the need for which arises out of injury, disease, child birth or disability of an MA recipient. ~~(11-10-81)(1-1-02)T~~

**02. Third Party Liability As A Current Resource.** In determining whether MA is payable, the

Department is to treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time. (11-10-81)

**03. Withholding Payment.** The Department must not withhold payment on behalf of an eligible MA recipient because of the liability of a third party when such liability, or the amount thereof, cannot be currently established or is not currently available to pay the recipient's medical expense. (11-10-81)

**04. Seeking Third Party Reimbursement.** The Department will seek reimbursement from a third party for MA when the party's liability is established after MA is granted, and in any other case in which the liability of a third party existed, but was not treated as a current resource, with the exceptions of ~~absent parent without a second valid resource~~, prenatal, EPSDT, and EPSDT related services. (2-4-91)(1-1-02)T

a. The Department will seek reimbursement for MA from a recipient when a recipient's liability is established after MA has been granted; and (11-10-81)

b. In any other situation in which the recipient has received direct payment from any third party resource and has not returned the money to the Department for MA service received. (11-10-81)

**05. Billing Third Parties First.** Medicaid providers must bill all other sources of direct third party payment, with the exception of absent parent (court ordered) without secondary resources, prenatal, EPSDT and EPSDT related services before submitting the claim to the Department. If the resource is an absent parent (court ordered) and there are no other viable resources available or if the claims are for prenatal, EPSDT, or EPSDT related services, the claims will be paid and the resources billed by the Department. (2-4-91)

**06. Accident Determination.** When the patient's Medicaid card indicates private insurance and/or when the diagnosis indicates an accident for which private insurance is often carried, the claim will be suspended or denied until it can be determined that there is no other source of payment. (11-10-81)

**07. Third Party Payments In Excess Of Medicaid Limits.** The Department will not reimburse providers for services provided when the amount received by the provider from the third party payor is equal to or exceeds the level of reimbursement allowed by MA for the services. (11-10-81)

**08. Subrogation Of Third Party Liability.** In all cases where the Department will be required to pay medical expenses for a recipient and that recipient is entitled to recover any or all such medical expenses from any third party, the Department will be subrogated to the rights of the recipient to the extent of the amount of medical assistance benefits paid by the Department as the result of the occurrence giving rise to the claim against the third party. (11-10-81)

a. If litigation or a settlement in such a claim is pursued by the MA recipient, the recipient must notify the Department. (11-10-81)

b. If the recipient recovers funds, either by settlement or judgment, from such a third party, the recipient must repay the amount of benefits paid by the Department on his behalf. (11-10-81)

**09. Subrogation Of Legal Fees.** (11-10-81)

a. If an MA recipient incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the Department is subrogated, the amount which the Department is entitled to recover, or any lesser amount which the Department may agree to accept in compromise of its claim, will be reduced by an amount which bears the same relation to the total amount of attorney fees and court costs actually paid by the recipient as the amount actually recovered by the Department, exclusive of the reduction for attorney fees and court costs, bears to the total amount paid by the third party to the recipient. (11-10-81)

b. If a settlement or judgment is received by the recipient which does not specify portion of the settlement or judgment which is for payment of medical expenses, it will be presumed that the settlement or judgment applies first to the medical expenses incurred by the recipient in an amount equal to the expenditure for benefits paid by the Department as a result of the payment or payments to the recipient. (11-10-81)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0205**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective April 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** Changes in dental rules are needed to comply with Legislative Intent language in the Department's Appropriations Bill to reduce Medicaid coverage for adults after the month of their twenty-first birthday to "emergency services only".

These rule changes are intended to manage Medicaid spending by reducing dental services for adults over the age of twenty-one (21) to basic emergency dental services.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made in order to comply with amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before May 22, 2002.

DATED this 6th day of March, 2002.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0205**

**900. DENTAL SERVICES.**

**01. Dental Services Provided.** Dental services are provided for the relief of dental pain, prosthetic replacement, and the correcting of handicapping malocclusion and are purchased from a licensed dentist or dentist. A Medicaid dental consultant will review requests for prior authorization, with accompanying documentation, to determine approval or denial. (3-15-02)

**02. Dental Covered Benefits And Limitations.** Dental services for children (through the month of their twenty-first birthday) are covered by Medicaid with specific limitations and exclusions. Idaho uses the procedure codes contained in the most recent Current Dental Terminology (CDT) handbook published by the American Dental Association. Dental services for pregnant adult women (after the month of their twenty-first birthday) are covered by Medicaid for services listed in Section 914 of these rules. Emergency dental services for adults (after the month of their twenty-first birthday) are covered by Medicaid for procedures listed in Section 915 of these rules. Dental services considered to be an emergency are those services provided because of a patient's dental condition which, after applying the prevailing dental standards of judgement and practice within the community, require immediate dental intervention. (~~3-15-02~~)(4-1-02)T

**03. Customary Fees.** Medicaid reimburses dentists for procedures on a fee-for-service basis. Usual and customary fees are paid up to the Medicaid maximum allowance. Dentists may make arrangements for private payment with families for services not covered by Medicaid. If the provider accepts any Medicaid payment for a covered service, the Medicaid payment must be accepted as payment in full and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (3-15-02)

**04. Non-Covered Services.** Non-covered services are procedures not recognized by the American Dental Association (ADA) and/or services not listed in these rules. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**SECTION 912 HAS BEEN RENUMBERED TO SECTION 914.**

**913~~2~~. DENTURIST POLICY GUIDELINES.**

**01. Overview.** Idaho Medicaid processes charges submitted by Idaho licensed denturists for services provided to eligible clients. Approved services are limited to those services allowed by Idaho code for Idaho licensed denturists. (3-15-02)

**02. Client Eligibility.** Clients without eligibility restrictions are eligible for denturist services through the month of their twenty-first birthday. Clients who are past the month of their twenty-first birthday, or who are eligible for the PWC program or who have only QMB eligibility are not eligible for denturist services. (~~3-15-02~~)(4-1-02)T

**03. Prior Authorization.** Prior authorization is not required for the denturist procedures except for 0515D found in Section 839 of these rules. Eligibility must be checked with VRS. (3-15-02)

**04. Payment.** Denturists will be reimbursed for procedures on a fee-for-service basis. Usual and customary charges will be paid up to the Medicaid maximum allowance. If a provider accepts Medicaid payment for a covered service, the Medicaid payment must be accepted as full payment and the client cannot be billed for the difference between the billed amount and the Medicaid allowed amount. (3-15-02)

**05. Service Limitations.** Medicaid allows complete and immediate denture construction once every five (5) years. Denture relines are allowed once every two (2) years. Complete and partial denture adjustment is considered part of the initial denture construction service for the first six (6) months. (3-15-02)

**9143. DENTURIST PROCEDURE CODES.**

The following codes are valid denturist procedure codes:

<b>TABLE 9143 - DENTURIST PROCEDURE CODES</b>	
<b>Dental Code</b>	<b>Description</b>
0515D	Unable to deliver full denture. Arch designation required. Prior authorization required. Laboratory cost may be paid for full dentures if the client: a) decides not to complete the denture; b) leaves the state; c) cannot be located; d) expires.
5110D	Complete denture, upper
5120D	Complete denture, lower
5130D	Immediate denture, upper
5140D	Immediate denture, lower
5410D	Adjust complete denture, upper
5411D	Adjust complete denture, lower
5421D	Adjust partial denture, upper
5422D	Adjust partial denture, lower
5510D	Repair broken complete denture base; arch designation required.
5520D	Replace missing or broken teeth, complete denture (each tooth); six (6) teeth maximum. Tooth designation required.
5610D	Repair resin saddle or base; arch designation required.
5620D	Repair cast framework; arch designation required.
5630D	Repair or replace broken clasp; arch designation required.
5640D	Replace broken teeth per tooth; tooth designation required.
5650D	Add tooth to existing partial denture; tooth designation required.
5660D	Add clasp to existing partial denture; not requiring the altering of oral tissue or natural teeth. Tooth designation required.
5730D	Reline complete upper denture (chairside)
5731D	Reline complete lower denture (chairside)
5740D	Reline upper partial denture (chairside)
5741D	Reline lower partial denture (chairside)
5750D	Reline complete upper denture (laboratory)
5751D	Reline complete lower denture (laboratory)
5760D	Reline upper partial denture (laboratory)
5761D	Reline lower partial denture (laboratory)

(3-15-02)(4-1-02)T

**9124. PWC COVERED DENTAL CODES FOR PREGNANT WOMEN.**

The following are the *only* codes covered for pregnant women *on the Pregnant Women and Children (PWC) program* over the age of twenty-one (21). Clients must be pregnant at the time of service and prior authorization may be required by the Department.

TABLE 9124 - PWC CODES FOR PREGNANT WOMEN	
Dental Code	Description
<b>01. Clinical Oral Examinations:</b>	
D0140	Limited oral evaluation.
<b>02. Radiographs:</b>	
D0220	Intraoral - periapical - first film.
D0230	Intraoral - periapical - each additional film.
D0330	Panoramic film.
<b>03. Restorative Services:</b>	
D2940	Sedative filling. Tooth designation required.
<b>04. Pulp Capping:</b>	
D3110	Pulp cap - direct (excluding final restoration). Tooth designation required.
D3220	Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required.
<b>05. Adjunctive Periodontal Services:</b>	
D04341	Periodontal scaling, root planning, per quadrant. Allowed once in a twelve (12) month period. This procedure is indicated for clients with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.
D4355	Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis.
<b>06. Oral Surgery:</b> Extractions - includes local anesthesia and routine postoperative care.	
D7110	Single tooth. Tooth designation required.
D7120	Each additional tooth. Tooth designation required.
D7130	Root removal - exposed roots. Tooth designation required.
<b>07. Surgical:</b> Extractions - includes local anesthesia and routine postoperative care.	
D7210	Surgical removal of an erupted tooth requiring elevation of the mucoperiosteal flap and removal of tooth structure, and closure. Tooth designation required.
D7220	Removal of impacted tooth - soft tissue. Tooth designation required.
D7230	Removal of impacted tooth - partially bony. Tooth designation required.
D7240	Removal of impacted tooth - completely bony. Tooth designation required.
D7241	Removal of impacted tooth - complicated. Tooth designation required.
D7250	Surgical removal of residual tooth roots (cutting procedure). Tooth designation required.
<b>08. Surgical Incision:</b>	



TABLE 9124 - PWG CODES FOR PREGNANT WOMEN	
Dental Code	Description
D7510	<del>Incision and drainage of abscess - intraoral soft tissue.</del>
<b>09. Unclassified Treatment.</b>	
D9110	<del>Palliative (emergency) treatment of dental pain - minor procedures.</del>
<b>403. Professional Consultation.</b>	
D9310	Consultation. Provided by dentist or physician whose opinion or advice regarding the evaluation, management and/or treatment of a specific problem or condition is requested by another dentist or physician. The written or verbal request for a consult must be documented in the client's medical record. The consultant's opinion and any services that were ordered or performed must also be documented in the client's medical record and communicated to the requesting dentist or physician. A dental consultant may initiate diagnostic and/or therapeutic services at the same or subsequent visit.
<b>4404. Professional Visits.</b>	
D9420	Hospital Call. May be reported when providing treatment in hospital or ambulatory surgical center, in addition to reporting appropriate code numbers for actual services performed. Limited to once per day per client.
D9430	<del>Office visit for observation - regular office hours - no other services performed.</del>
D9440	<del>Office visit - after regularly scheduled hours.</del>

(3-15-02)(4-1-02)T

**915. COVERED DENTAL CODES FOR ADULTS.**

The following are the codes covered for adults after the month of their twenty-first birthday. Clients must have a documented diagnosis indicating a dental emergency situation existed at the time of service.

TABLE 915 - ADULT CODES	
Dental Code	Description
<b>01. General Oral Evaluations.</b>	
D0140	Limited oral evaluation. An evaluation or re-evaluation limited to a specific oral health problem. Not to be used when a client returns on a later date for follow-up treatment subsequent to either a comprehensive or periodic exam. This may require interpretation of information acquired through additional diagnostic procedures. Report additional diagnostic procedures separately. Definitive procedures may be required on the same date as the evaluation.
D0150	Comprehensive oral evaluation.
<b>02. Radiographs/Diagnostic Images.</b>	
D0220	Intraoral periapical - first film.
D0230	Intraoral periapical - each additional film.
D0270	Bitewing - single film.
D0330	Panoramic film. Panorex, panelipse or orthopantograph are also allowed under this code.
<b>03. Other Restorative Services.</b>	
D2940	Sedative filling. Tooth designation required. Surface is not required.

<b>TABLE 915 - ADULT CODES</b>	
<b>Dental Code</b>	<b>Description</b>
<b>04. Endodontics</b>	
<u>D3220</u>	<u>Therapeutic pulpotomy (excluding final restoration). Once per tooth. Tooth designation required. Not to be construed as the first step of root canal therapy.</u>
<b>05. Periodontics.</b>	
<u>D4341</u>	<u>Periodontal scaling and root planing (per quadrant). This procedure is indicated for clients with periodontal disease and is therapeutic, not prophylactic, in nature. Quadrant designation required.</u>
<u>D4355</u>	<u>Full mouth debridement to enable comprehensive periodontal evaluation and diagnosis. The removal of subgingival and/or supragingival plaque and calculus. This is a preliminary procedure and does not preclude the need for other procedures.</u>
<b>06. Oral Surgery - Simple Extraction.</b>	
<u>D7110</u>	<u>Single tooth. Tooth designation required.</u>
<u>D7120</u>	<u>Each additional tooth. Tooth designation required.</u>
<u>D7130</u>	<u>Root removal - exposed roots. Tooth designation required.</u>
<b>07. Oral Surgery - Surgical Extraction.</b>	
<u>D7210</u>	<u>Surgical removal of erupted tooth requiring elevation of mucoperiosteal flap and removal of bone and/or section of tooth. Includes cutting of gingiva and bone, removal of tooth structure, and closure. Tooth designation required.</u>
<u>D7220</u>	<u>Removal of impacted tooth - soft tissue. Occlusal surface of tooth covered by soft tissue; requires mucoperiosteal flap elevation. Tooth designation required.</u>
<u>D7230</u>	<u>Removal of impacted tooth -- partially bony. Part of crown covered by bone; requires mucoperiosteal flap elevation, bone removal, and may require segmentalization of tooth. Tooth designation required.</u>
<u>D7250</u>	<u>Surgical removal of residual tooth roots (cutting procedure). Includes cutting of gingiva and bone, removal of tooth structure, and closure. Can be completed for the same tooth number as previously extracted without prior approval. Tooth designation required.</u>
<b>08. Surgical Incision.</b>	
<u>D7510</u>	<u>Incision and drainage of abscess - intraoral soft tissue.</u>
<b>09. Repair Of Traumatic Wounds.</b>	
<u>D7910</u>	<u>Suture of recent small wounds up to five (5) cm.</u>
<b>10. Unclassified Treatment.</b>	
<u>D9110</u>	<u>Palliative (emergency) treatment of dental pain, minor procedure (open and drain abscess, etc.). Tooth or Quadrant designation required.</u>
<b>11. Anesthesia.</b>	
<u>D9220</u>	<u>General anesthesia - first thirty (30) minutes. Not included as general anesthesia are tranquilization; nitrous oxide; or enteral or parenteral administration of analgesic, sedative, tranquilizing, or dissociative agents.</u>
<u>D9221</u>	<u>General anesthesia - each additional fifteen (15) minutes.</u>

<b>TABLE 915 - ADULT CODES</b>	
<b>Dental Code</b>	<b>Description</b>
<u>D9241</u>	Intravenous sedation/analgesia -first thirty (30) minutes. Provider certification required.
<u>D9242</u>	Intravenous sedation/analgesia - each additional fifteen (15) minutes. Provider certification required.
<b>12. Professional Visits</b>	
<u>D9430</u>	Office visit for observation (during regularly scheduled hours). No other services performed.
<u>D9440</u>	Office visit after regularly scheduled hours.
<b>13. Miscellaneous Service.</b>	
<u>D9930</u>	Treatment of complication (post-surgical) - unusual circumstances.

(4-1-02)T

**9156. DENTAL PRIOR AUTHORIZATION.**

All procedures that require prior authorization must be approved by the Medicaid dental consultant prior to the service being rendered. Prior authorization requires written submission including diagnostics. Verbal authorizations will not be given. Retroactive authorization will be given only in an emergency situation or as the result of retroactive eligibility. Prior authorization of Medicaid dental procedures does not guarantee payment. Client Medicaid eligibility must be verified by the provider before the authorized service is rendered. (3-15-02)

**9167. -- 995. (RESERVED).**

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM**

**DOCKET NO. 16-0309-0206**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective May 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This is a change in Medicaid reimbursement methodology for Medicaid claims which are also covered by Medicare Part B. Currently Medicaid pays the full deductible and co-insurance after Medicare pays the Medicare allowed amount. New methodology will treat Medicare as any other third party resource (pay the provider up to the Medicaid allowed amount minus the third party, or Medicare, payment).

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are being made in order to comply with amendments to governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Arla Farmer at (208) 364-1958.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before May 22, 2002.

DATED this 20th day of March, 2002.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0206

**060. FEES AND UPPER LIMITS.**

**01. Inpatient Hospital Fees.** In reimbursing licensed hospitals, the Department will pay the lesser of customary charges or the reasonable cost of semi-private rates for inpatient hospital care in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, "Rules Governing Medicaid Provider Reimbursement in Idaho". Inpatient payments shall not exceed the Upper Payment limit set forth in the Code of Federal Regulations. (7-1-97)

**02. Outpatient Hospital Fees.** The Department will not pay more than the combined payments the provider is allowed to receive from the beneficiaries and carriers or intermediaries for providing comparable services under comparable circumstances under Medicare. Outpatient hospital services identified below that are not listed in the Department's fee schedules will be reimbursed reasonable costs based on a year end cost settlement. (7-1-97)

a. Maximum payment for hospital outpatient diagnostic laboratory services will be limited to the Department's established fee schedule. (5-25-93)

b. Maximum payment for outpatient hospital diagnostic radiology procedures will be limited to the blended rate of costs and the Department's established fee schedule specified in IDAPA 16, Title 03, Chapter 10, Subsection 457.02, at the time of cost settlement. (7-1-97)

c. Maximum payment for hospital outpatient partial care services will be limited to the Department's established fee schedule. (5-5-93)

d. Maximum payment for hospital out-patient surgical procedures will be limited to the blended rate of costs and the Department's fee schedule for ambulatory surgical centers specified in IDAPA 16.03.10, Subsection 457.01, at the time of cost settlement. (7-1-97)

e. Hospital based ambulance services will be reimbursed according to Medicare cost reimbursement principles. All other ambulance providers will be reimbursed according to the Department's established fee schedule for medical transportation. (7-1-97)

**03. Long-Term Care Facility Fees.** Long-term care facilities will be reimbursed the lower of their customary charges, their actual reasonable costs, or the standard costs for their class as set forth in the Provider Reimbursement Manual, but the upper limits for payment must not exceed the payment which would be determined as reasonable costs using the Title XVIII Medicare standards and principles. (11-10-81)

**04. Individual Provider Fees.** The Department will not pay the individual provider more than the lowest of: (11-10-81)

a. The provider's actual charge for service; or (11-10-81)

b. The maximum allowable charge for the service as established by the Department on its pricing file, if the service or item does not have a specific price on file, the provider must submit documentation to the Department and reimbursement will be based on the documentation; or (3-30-01)

c. The ~~Medicare~~ Medicaid upper limitation of payment on those services, minus the Medicare payment, where a beneficiary is eligible ~~under for~~ both ~~programs~~ Medicare and Medicaid ~~is responsible only for the deductible and co-insurance payment.~~ The Department will not reimburse providers an amount in excess of the amount allowed by Medicaid, minus the Medicare payment. (~~11-10-81~~)(5-1-02)T

**05. Fees For Other Noninstitutional Services.** The Department will reimburse for all noninstitutional services which are not included in other Idaho Department of Health and Welfare Rules, but allowed under Idaho's

Medical Assistance Program according to the provisions of 42 CFR Section 447.325 and 42 CFR Section 447.352 and Section 1902(a)(13)(E) of the Social Security Act. (7-1-97)

**06. Fees For Speech, Occupational And Physical Therapy Services.** The fees for physical, occupational, and speech therapy include the use of therapeutic equipment to provide the modality or therapy. No additional charge may be made to either the Medicaid program or the client for the use of such equipment. (7-1-99)

**(BREAK IN CONTINUITY OF SECTIONS)**

**070. PHYSICIAN SERVICES.**

**01. Services Provided.** The Department will reimburse for treatment of medical and surgical conditions by doctors of medicine or osteopathy subject to the limitations of practice imposed by state law, and to the restrictions and exclusions of coverage contained in Section 065 and Subsection 070.02. All services not specifically included in this chapter are excluded from reimbursement. (12-31-91)

**02. Restriction Of Coverage.** (7-1-93)

a. Out-patient psychiatric mental health services are limited to twelve (12) hours of psychiatric evaluations per eligible recipient in any twelve (12) month period; and any combination of individual or group psychotherapy services provided by a physician up to a maximum of forty-five (45) hours of service in the consecutive twelve (12) months period beginning with the first such service. (11-10-81)

b. Particular restrictions pertaining to payment for sterilization procedures are contained in Section 090; and (12-31-91)

c. Restrictions governing payment for abortions are contained in Section 095; and (12-31-91)

d. Payment for tonometry is limited to one (1) examination for individuals over the age of forty (40) years during any twelve (12) month period (in addition to tonometry as a component of examination to determine visual acuity). In the event examination to determine visual acuity is not done, two (2) tonometry examinations per twelve (12) month period are allowed recipients over the age of forty (40). This limitation does not apply to recipients receiving continuing treatment for glaucoma. (10-25-88)

e. Payment for physical therapy services performed in the physician's office is limited to those services which are described and supported by the diagnosis; and (11-10-81)

f. Payment for allowable injectable vitamins will be allowed when supported by the diagnosis. Injectable vitamin therapy is limited to Vitamin B12 (and analogues), Vitamin K (and analogues), folic acid, and mixtures consisting of Vitamin B12, folic acid, and iron salts in any combination. (11-10-81)

g. Corneal transplants and kidney transplants are covered by the MA program. (5-15-84)

**03. Misrepresentation Of Services.** Any representation that a service provided by a nurse practitioner, nurse midwife, physical therapist, physician assistant, psychologist, social worker, or other nonphysician professional as a physician service is prohibited. (6-1-86)

**04. Physician Penalties For Late PRO Review.** Medicaid will assess the physician a penalty for failure to have a preadmission review in accordance with Subsection 080.02.a. and Idaho Department of Health and Welfare Rules, IDAPA 16.03.10, "Rules Governing Provider Reimbursement in Idaho," as amended. A penalty will be assessed according to Subsection 070.05 entitled "Physician Penalty Chart". The penalty will be assessed after billing for physician services has occurred. (3-30-01)

**05. Physician Penalty Chart.** (3-1-92)

- a. A request for preadmission PRO review that is one (1) day late will result in a penalty of fifty dollars (\$50). (3-30-01)
- b. A request for preadmission PRO review that is two (2) days late will result in a penalty of one hundred dollars (\$100). (3-30-01)
- c. A request for preadmission PRO review that is three (3) days late will result in a penalty of one hundred and fifty dollars (\$150). (3-30-01)
- d. A request for preadmission PRO review that is four (4) days late will result in a penalty of two hundred dollars (\$200). (3-30-01)
- e. A request for preadmission PRO review that is five (5) days late or later will result in a penalty of two hundred and fifty dollars (\$250). (3-30-01)

**06. Physician Excluded From The Penalty.** Any physician who provides care but has no control over the admission, continued stay or discharge of the patient will not be penalized. Assistant surgeons and multi-surgeons are not excluded from the penalty. (3-1-92)

**07. Procedures For Medicare Cross-Over Claims.** If a MA recipient is eligible for Medicare, the physician must bill Medicare first for the services rendered to the recipient. (11-10-81)

a. If a physician accepts a Medicare assignment, the ~~payment for the Medicare co-insurance and deductible will be made~~ Department will pay the physician for the services, up to the Medicaid allowable amount minus the Medicare payment, and forwarded the payment to the physician automatically based upon the ~~EOBM Medicare Summary Notice (MSN)~~ information on the computer tape which is received from the Medicare Part B Carrier on a weekly basis. ~~(11-10-81)(5-1-02)T~~

b. If a physician does not accept a Medicare assignment, a ~~Medicare EOMB Medicare Summary Notice (MSN)~~ must be attached to the appropriate claim form and submitted to the ~~Bureau for the billing of Medicare co-insurance and deductible~~ Department. ~~The Department will pay the physician for the services, up to the Medicaid allowable amount minus the Medicare payment.~~ ~~(11-10-81)(5-1-02)T~~

c. In order for the Department to make payment, the physician must agree to accept the payment from Medicare and Medicaid as payment in full for covered services. (11-10-81)

**08. Procedure For Locum Tenens Claims And Reciprocal Billing.** (3-15-02)

a. In reimbursement for Locum Tenens/Reciprocal Billing, the patient's regular physician may submit the claim and receive payment for covered physician services (including emergency visits and related services) provided by a Locum Tenens physician who is not an employee of the regular physician if: (3-15-02)

i. The regular physician is unavailable to provide the visit services. (3-15-02)

ii. The Medicaid patient has arranged for or seeks to receive services from the regular physician. (3-15-02)

iii. The regular physician pays the Locum Tenens for his services on a per diem or similar fee-for-time basis. (3-15-02)

iv. The substitute physician does not provide the visit services to Medicaid patients over a continuous period of longer than ninety (90) days for Locum Tenens and over a continuous period of fourteen (14) days for Reciprocal Billing. (3-15-02)

v. The regular physician identifies the services as substitute physician services meeting the requirements of this Section by appending modifier-Q6 (service furnished by a Locum Tenens physician) to the procedure code or Q5 (services furnished by a substitute physician under Reciprocal Billing arrangements).

(3-15-02)

vi. The regular physician must keep on file a record of each service provided by the substitute physician associated with the substitute physician's UPIN, and make this record available to the department upon request. (3-15-02)

vii. The claim identifies (in a manner specified by the department) the physician who furnished the services. (3-15-02)

b. If the only Locum Tenens/Reciprocal billing services a physician performs in connection with an operation are post-operative services furnished during the period covered by the global fee, those services shall not be reported separately on the claim as substitution services, but shall be deemed as included in the global fee payment. (3-15-02)

c. A physician may have Locum Tenens/reciprocal billing arrangements with more than one (1) physician. The arrangements need not be in writing. Locum Tenens/reciprocal billing services need not be provided in the office of the regular physician. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**085. OUT-PATIENT HOSPITAL SERVICES.**

On site services eligible for payment include preventive, diagnostic, therapeutic, rehabilitative or palliative items, or services furnished by or under the direction of a physician or dentist, unless excluded by any other provisions of this chapter. (3-22-93)

**01. Exceptions And Limitations. (7-1-93)**

a. Claims for emergency room service must include a diagnosis and copy of the emergency room record. (11-10-81)

b. Payment for emergency room service is limited to six (6) visits per calendar year. (11-10-81)

c. Emergency room services which are followed immediately by admission to inpatient status will be excluded from the six (6) visit limit. (11-10-81)

**02. Procedures For Medicare Cross-Over Claims. (11-10-81)**

a. If an MA recipient is eligible for Medicare, the hospital must first bill Medicare for the services rendered to the recipient. (11-10-81)

b. If the services are related to the professional component of laboratory and x-ray services, the ~~payment for Medicare co-insurance and deductible will be made~~ Department will pay the hospital for the services, up to the Medicaid allowable amount minus the Medicare payment, and forwarded the payment to the hospital automatically based upon the ~~EOB~~ EOMB Medicare Summary Notice (MSN) cross-over information. ~~(11-10-81)(5-1-02)T~~

c. For all other services, a Medicare ~~EOB~~ EOMB Summary Notice (MSN) must be attached to the appropriate claim form and submitted to the ~~Bureau for the billing of Medicare co-insurance and deductible charges~~ Department. The Department will pay the provider for the services up to the Medicaid allowable amount minus the Medicare payment. ~~(11-10-81)(5-1-02)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**150. TRANSPORTATION.**



**01. Scope of Coverage And General Requirements For Ambulance Services.** Medically necessary ambulance services are reimbursable in emergency situations or when prior authorization has been obtained from the Department or its designee. Ambulance services are subject to review by the Department or its designee prior to the service being rendered, and on a retrospective basis. Ambulance service review is governed by provisions of the Transportation Policies and Procedures Manual as amended. If such review identifies that an ambulance service is not covered, then no Medicaid payment will be made for the ambulance service. Reimbursement for ambulance services originally denied by the Department or its designee will be made if such decision is reversed by the appeals process required in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". Payment for ambulance services is subject to the following limitations: (3-15-02)

a. If a Medicaid recipient is also a Medicare recipient, a provider must first bill Medicare for services rendered. (7-1-98)

b. If Medicare does not pay the entire bill for ambulance service, the provider is to secure ~~the~~ "Explanation of Benefits" (EOB) a Medicare Summary Notice (MSN) from Medicare, attach it to the appropriate claim form and submit it to the Department. (7-1-98)(5-1-02)T

c. For Medicare recipients, the Department will reimburse providers for ~~deductible and co-insurance not to exceed the Medicaid allowed amount for the services billed~~ services up to the Medicaid allowable amount minus the Medicare payment. (7-1-98)(5-1-02)T

d. Before payment is made by the Department, a Medicaid recipient must utilize any available insurance benefits to pay for ambulance services. (7-1-98)

e. Ambulance services are medically necessary when an emergency condition exists. For purposes of reimbursement, an emergency condition exists when a recipient manifests acute symptoms and/or signs which, by reasonable medical judgement of the Department or its designee, represent a condition of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in death, serious impairment of a bodily function or major organ, and/or serious jeopardy to the overall health of the recipient. If such condition exists, and treatment is required at the recipient's location, or transport of the recipient for treatment in another location by ambulance is the only appropriate mode of travel, the Department will review such claims and consider authorization for emergency ambulance services. If an emergency does not exist, prior written authorization to transport by ambulance must be secured from the Department or its designee. For purposes of reimbursement, in non-emergency situations, the provider must provide justification to the Department or its designee that travel by ambulance is medically necessary due to the medical condition of the recipient, and that any other mode of travel would, by reasonable medical judgement of the Department or its designee, result in death, serious impairment of a bodily function or major organ, and/or serious jeopardy to the overall health of the recipient. (7-1-98)

f. Each billing invoice for ambulance service must have prior authorization attached, if appropriate, and be submitted to the Department for payment. Ambulance units that are not hospital-based must bill on a HCFA 1500 claim form and are reimbursed on a fee for service schedule. Hospital-based ambulance units must bill on a UB-92 claim form and are reimbursed at the hospital's outpatient reimbursement rate. If no attachments to the claim are required, the provider may bill electronically. (7-1-98)

g. All Emergency Medical Services (EMS) Providers that provide services to Medicaid recipients in Idaho must hold a current license issued by the Emergency Medical Services Bureau of the Department, and must be governed by IDAPA 16.02.03, "Rules Governing Emergency Medical Services". Ambulances based outside the state of Idaho must hold a current license issued by their states' EMS licensing authority when the transport is initiated outside the state of Idaho. Payment will not be made to ambulances that do not hold a current license. (7-1-98)

h. Only local transportation by ambulance is covered. In exceptional situations where the ambulance transportation originates beyond the locality to which the recipient was transported, payment may be made for such services only if the evidence clearly establishes that such institution is the nearest one with appropriate facilities and the service is authorized by the Department or its designee. (7-1-98)

i. Ambulance services providers cannot charge Medicaid recipients more than is charged to the

general public for the same service. (7-1-98)

**02. Air Ambulance Service.** In some areas, transportation by airplane or helicopter may qualify as ambulance services. Air ambulance services are covered only when: (7-1-98)

a. The point of pickup is inaccessible by land vehicle; or (11-10-81)

b. Great distances or other obstacles are involved in getting the recipient to the nearest appropriate facility and speedy admission is essential; and (11-10-81)

c. Air ambulance service will be covered where the recipient's condition and other circumstances necessitate the use of this type of transportation; however, where land ambulance service will suffice, payment will be based on the amount payable for land ambulance, or the lowest cost. (11-10-81)

d. Air ambulance services must be approved in advance by the Department or its designee except in emergency situations. Emergency air ambulance services shall be authorized by the Department or its designee on a retrospective basis. (3-15-02)

e. The operator of the air service must bill the air ambulance service rather than the hospital or other facility receiving the recipient. (7-1-98)

**03. Ambulance Reimbursement.** (7-1-98)

a. Base rate for ambulance services includes customary patient care equipment including such items as stretcher, clean linens, reusable devices, and reusable equipment. (11-10-81)

b. Not to be included as a base rate and to be billed separately are charges for each nonreusable item and disposable supply, such as oxygen, triangular bandage and dressing, which may be required for the care of the recipient during transport. Oxygen will be reimbursed according to volume used by the recipient during transport. The volume must appear in the appropriate field on the claim. (7-1-98)

c. Charges for extra attendants are not covered except for justified situations and must be authorized by the Department or its designee. (7-1-98)

d. If a physician is in attendance during transport, he is responsible for the billing of his services. (11-10-81)

e. Reimbursement for waiting time will not be considered unless documentation submitted to the Department or its designee identifies the length of the waiting time and establishes its medical necessity or indicates that it was physician ordered. Limited waiting time will be allowed for round trips. (7-1-98)

f. Ambulance units are licensed by the EMS Bureau of the Department, or other states' EMS licensing authority according to the level of training and expertise its personnel maintains. At least, this level of personnel are required to be in the patient compartment of the vehicle for every ambulance trip. The Department will reimburse a base rate according to the level of ambulance license the unit has been issued. Units with Emergency Medical Technician - Basic (EMT-B) or equivalent personnel in the patient compartment of the vehicle will be reimbursed at the Basic Life Support (BLS) rate. Units with Advanced Emergency Medical Technician-Ambulance (AEMT-A) or equivalent personnel in the patient compartment of the vehicle will be reimbursed at the Intermediate Life Support (ILS) rate. Units with Emergency Medical Technician - Paramedic (EMT-P) or equivalent personnel in the patient compartment of the vehicle will be reimbursed at the Advanced Life Support (ALS) rate. In addition to the base rate, the Department will reimburse mileage. These rates are set by the Department. (7-1-98)

g. If multiple licensed EMS providers are involved in the transport of a recipient, only the ambulance provider which actually transports the recipient will be reimbursed for the services. In situations where personnel and equipment from a licensed ALS provider boards an ILS or BLS ambulance, the transporting ambulance may bill for ALS services as authorized by the Department or its designee. In situations where personnel and equipment from a licensed ILS provider boards a BLS ambulance, the transporting ambulance may bill for ILS services as authorized

by the Department or its designee. In situations where medical personnel and equipment from a medical facility are present during the transport of the recipient, the transporting ambulance may bill at the ALS level of service. The transporting provider must arrange to pay the other provider for their services. The only exception to the preceding policy is in situations where medical personnel employed by a licensed air ambulance provider boards an ALS, ILS, or BLS ground ambulance at some point, and the air ambulance medical personnel also accompany and treat the recipient during the air ambulance trip. In this situation, the air ambulance provider may bill the appropriate base rate for the air ambulance trip, and may also bill the charges associated with their medical personnel and equipment as authorized by the Department or its designee. The ground ambulance provider may also bill for their part of the trip as authorized by the Department or its designee. (7-1-98)

h. If multiple licensed EMS providers transport a recipient for different legs of a trip, each provider must bill their base rate, mileage, and for nonreusable supplies and oxygen used, as authorized by the Department or its designee. (7-1-98)

i. If a licensed transporting EMS provider responds to an emergency situation and treats the recipient, but does not transport the recipient, the Department may reimburse for the treat and release service. The Department will reimburse the appropriate base rate and will pay for nonreusable supplies and oxygen used at the scene. This service requires authorization from the Department or its designee, usually on a retrospective basis. (7-1-98)

j. If an ambulance vehicle and crew have returned to a base station after having transported a recipient to a facility and the recipient's physician orders the recipient to be transferred from this facility to another facility because of medical need, two (2) base rate charges, in addition to the mileage, will be considered for reimbursement. If an ambulance vehicle and crew do not return to a base station and the patient is transferred from one (1) facility to another facility, charges for only one (1) base rate, waiting time, and mileage will be considered. (7-1-98)

k. Round trip charges will be allowed only in circumstances when a facility in-patient is transported to another facility to obtain specialized services not available in the facility in which the recipient is an in-patient. The transport must be to and from a facility that is the nearest one with the specialized services. (7-1-98)

l. If a licensed transporting EMS provider responds to a recipient's location and upon examination and evaluation of the recipient, finds that his condition is such that no treatment or transport is necessary, the Department will pay for the response and evaluation service. This service requires authorization by the Department or its designee, usually on a retrospective basis. No payment will be made if the EMS provider responds and no evaluation is done, or the recipient has left the scene. No payment will be made for mileage, supplies or oxygen, nor will payment be made to an EMS provider who is licensed as a non-transporting provider. (3-15-02)

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES**  
**DOCKET NO. 16-0601-0201**  
**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective March 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 16-1623, 16-2001, 16-2401, 56-202(b), 56-204(a), 56-204A, 56-1003(1), 56-1004, 56-1007, 56-803, 16-1822 and 16-1827, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**May 9, 2002**, at 7:00 p.m.,  
Conference Room, Department of Health and Welfare Region I,  
1250 Ironwood Drive, Ste. 100, **Coeur d'Alene**;

**May 14, 2002**, at 7:00 p.m.,  
Room 119, Department of Health and Welfare, Region IV,  
1720 Westgate Drive, Ste. D, **Boise**;

**May 22, 2002**, at 7:00 p.m.,  
Room 210, Department of Health and Welfare, Region VI,  
421 Memorial Drive, **Pocatello**;

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Rules Governing Family and Children's Services currently contain five (5) dispositional codes: valid, verifiable, indicated, unable to determine and invalid. Having this array of dispositions for child protection reports is a source of confusion for workers, results in challenges to inter-rater reliability, and poses difficulties when reporting state statistics. It is important to have a reliable methodology for dispositions as "valid" reports are entered into the State Child Abuse Registry. This registry is critical to the safety of Idaho children as the database for Child Protection background checks. A review of the dispositional schemes of other states and work with the state's child protection Chiefs of social work yielded consensus on two (2) dispositions: Substantiated and Unsubstantiated with a clear definition of each.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to meet federal regulations, for protection of the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with DHW Child Welfare Chiefs of Social Work, Keeping Children Safe Panel Members and Children at Risk Task Force.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Chuck Halligan at (208) 334-6559.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before May 22, 2002.

DATED this 20th day of March, 2002.

SHERRI KOVACH  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
450 West State Street, 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone, (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-0201**

**560. DISPOSITION OF REPORTS.**

Within five (5) days following completion of risk assessments, the Department shall determine whether the reports are ~~valid~~ substantiated or ~~not valid~~ unsubstantiated. The ~~validity~~ substantiation of reports shall be determined using the following definitions, with consideration given to the age of the child, extenuating circumstances, prior history, parental attitude toward discipline, and severity of abuse or neglect: ~~(3-30-01)(3-1-02)T~~

**01. ~~Valid~~ Substantiated.** Child abuse and neglect reports are confirmed by one (1) or more of the following: ~~(3-30-01)(3-1-02)T~~

- a. Witnessed by a worker; (3-30-01)
- b. Determined or evaluated by a court; (3-30-01)
- c. A confession; or (3-30-01)
- d. Substantiated Validated through the presence of significant evidence that establishes a clear factual foundation for the determination of "~~valid~~substantiated". ~~(3-30-01)(3-1-02)T~~

~~**02. Verifiable.** A "verifiable" disposition cannot show a pattern of repetition. Where there has been a previous disposition of "verifiable", the disposition should be recorded as "valid". If a subsequent disposition is recorded as "verifiable", a variance should be documented. Child abuse and neglect reports are confirmed by one (1) or more of the following: ~~(3-30-01)~~~~

- ~~a. Witnessed by a worker; ~~(3-18-99)~~~~
- ~~b. Determined or evaluated by a court; ~~(3-18-99)~~~~
- ~~c. A confession; or ~~(3-18-99)~~~~
- ~~d. Substantiated through the presence of significant evidence, but where circumstances demonstrated that such incidents are not likely to reoccur. ~~(3-30-01)~~~~

**03. Indicated.** Child abuse and neglect reports are indicated when the allegations cannot be confirmed

*or refuted; however, the worker has a reasonable belief the abuse or neglect occurred.* (3-18-99)

**04. ~~Unable To Determine.~~** *A determination of child abuse and neglect cannot be made and the worker has no firm belief that abuse or neglect occurred. This category includes reports relating to families the worker is unable to locate.* (3-18-99)

**052. ~~Invalid Unsubstantiated.~~** Child abuse and neglect reports *that are clearly unfounded, erroneous or otherwise incorrect. The worker is reasonably sure that the abuse or neglect did not occur.* that cannot be found substantiated due to: (3-18-99)(3-1-02)T

a. Insufficient evidence; or (3-1-02)T

b. Facts indicate that the report is erroneous or otherwise unfounded. (3-1-02)T

**561. ~~VALID~~ SUBSTANTIATED REPORTS.**

For reports determined to be "~~valid substantiated~~", the appropriate information shall be entered into the Department's Central Registry for the reporting of child abuse, abandonment and neglect, and the alleged perpetrator so advised in writing. Notification will include how the individual can appeal to have ~~his~~ the disposition status changed. (3-18-99)(3-1-02)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**563. ~~ALL OTHER~~ UNSUBSTANTIATED REPORTS.**

If it is determined through the risk assessment that ~~a reports are "not valid" (Verifiable, Indicated, Unable to Determine, or Invalid)~~ is "unsubstantiated", the family shall also be advised. (3-30-01)(3-1-02)T

**01. Request For Statement.** Upon the individual's request, the field office shall issue written statements indicating that: (3-18-99)

a. The Department has not obtained sufficient information to warrant further assessment of or action on that specific report; and (3-18-99)

b. The Department shall fulfill its legal responsibility to investigate and take appropriate action on any further reports that elaborate on the previous allegations or relate new allegations. (3-18-99)

**02. Removal Of Identifying Information From The Department's Central Registry Of ~~Valid Substantiated~~ Child Protection Referral Dispositions.** The Department shall remove identifying information regarding a specific individual only when that individual has successfully appealed his name being placed on the Central Registry. (3-30-01)(3-1-02)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**  
**16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)**

**DOCKET NO. 16-0612-0201**

**NOTICE OF RULEMAKING - TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is March 15, 2002.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Section(s) 56-203(b), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The rules establish a Child Care Stabilization grant program for ICCP providers who have been participating in ICCP since August of 2001. To qualify, 51% of the children the provider cares for must get ICCP. The amount billed to ICCP for April services must equal 50% of total billed costs for child care services for April. The amount of the grant will be 50% of the costs billed to ICCP for April not to exceed \$2,500. The cap on expenditures for this grant program is \$100,000. Applications for this grant must be received by May 1, 2002.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The rulemaking is necessary to confer a benefit to the public.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted in order to confer a benefit to the public and the intent of the rule is to be effect from March 15, 2002 through May 31, 2002 only.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary, contact LaDonna Larson at (208) 334-5818.

DATED this 19th day of March, 2002.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW - Division of Legal Services  
450 West State Street, 10th Floor  
P.O. Box 83720  
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kovachs@idhw.state.id.us e-mail

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-0201**

**318. CHILDCARE STABILIZATION GRANTS.**

The Department has established a grant program to ensure continued availability of child care for ICCP families. Up to one hundred thousand dollars (\$100,000) is available for this grant program. The rules governing these grants in Section 318 through Section 319 are effective from March 15, 2002 through May 31, 2002. Providers must meet the

conditions listed in Subsections 318.01 through 318.06 in these rules. (3-15-02)T

**01. Application Date.** The provider must apply for the grant no later than May 1, 2002. (3-15-02)T

**02. Provider Start Date.** The provider must be an ICCP provider continuously since August 1, 2001. (3-15-02)T

**03. Children Receiving ICCP.** At least fifty one percent (51%) of the children cared for by the provider must receive ICCP. (3-15-02)T

**04. April ICCP Billing.** The amount the provider bills to ICCP for April 2002 services must be at least fifty percent (50%) of their total billed costs for April 2002 child care services. (3-15-02)T

**05. Co-Pay Status.** ICCP parent co-pay must be current. (3-15-02)T

**06. Proof Of Income And Expenses.** The provider must make available to the Department an income and expense balance sheet listing: (3-15-02)T

a. The total number of children in care and the fees charged for those children. (3-15-02)T

b. The number of children receiving ICCP payments and the income received for the care of those children. (3-15-02)T

c. The number of self pay children in care and the income received for the care of those children. (3-15-02)T

**319. MAXIMUM GRANT AMOUNT.**

The maximum grant a provider may receive is the lesser of fifty percent (50%) of the amount billed to ICCP for April, 2002 or two thousand five hundred dollars (\$2,500). (3-15-02)T

~~318~~20. -- 999. (RESERVED).



**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

**24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY**

**DOCKET NO. 24-0401-0101**

**NOTICE OF RULEMAKING - FINAL RULE**

**EFFECTIVE DATE:** The effective date of Final Rule is March 8, 2002.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the 2002 Legislature has taken action by concurrent resolution on this rulemaking.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the proposed rule and the text of the final rule with an explanation for any changes.

Pursuant to House Concurrent Resolution 48, proposed changes to IDAPA 24.04.01 adopted by the agency as pending rules, Subsection 600.05.b. only, was rejected and not approved. Docket No. 24-0401-0101 is being amended accordingly by deleting the rejected subsection from the final rule.

The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-10, October 3, 2001, pages 602 through 613. The pending rule was published in the Idaho Administrative Bulletin, Volume 01-12, December 5, 2001, page 93.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Rayola Jacobsen (208) 334-3233.

DATED this 27th day of March, 2002.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, ID 83702  
(208) 334-3233 / FAX (208) 334-3945

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**THE FOLLOWING IS THE TEXT OF THE FINAL RULE AS AMENDED BY HCR 48**

***SUBSECTION 600.05.b.***

**600. INSTRUCTOR RULES (Rule 600).**

**05. Instructor Reexamination. ~~(3-8-02)~~**

~~a.~~ To be eligible, an applicant must obtain two hundred (200) hours additional instruction in a school of cosmetology, nail technology, esthetics, or electrology as a student instructor. (3-8-02)

~~b.~~ *Applicant failing below seventy five percent (75%) will not be required to complete any additional instruction prior to the first reexamination.* ~~(7-1-01)F~~

**IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

**24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS**

**DOCKET NO. 24-0801-0101**

**NOTICE OF RULEMAKING - FINAL RULE**

**EFFECTIVE DATE:** The effective date of Final Rule is March 13, 2002.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the 2002 Legislature has taken action by concurrent resolution on this rulemaking.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the proposed rule and the text of the final rule with an explanation for any changes.

Pursuant to Senate Concurrent Resolution 131, proposed changes to IDAPA 24.08.01 adopted by the agency as pending rules, Subsection 500.07 only, was rejected and has been reverted back to the original text.

The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 01-8, August 1, 2001, pages 86 through 89. The pending rule was published in the Idaho Administrative Bulletin, Volume 01-11, November 7, 2001, page 78.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Rayola Jacobsen (208) 334-3233.

DATED this 27th day of March, 2002.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, ID 83702  
(208) 334-3233  
FAX (208) 334-3945

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**THE FOLLOWING IS THE TEXT OF THE FINAL RULE AS AMENDED BY SCR 131**

**500. FEES (Rule 500).**

- 01. Funeral Director.** Funeral Director - Eighty-five dollars (\$85). (3-13-02)
- 02. Funeral Establishment.** Funeral Establishment – One hundred twenty-five dollars (\$125) (original license/annual renewal). (3-13-02)
- 03. Mortician.** Mortician - Eighty-five dollars (\$85) (original license/annual renewal). (3-13-02)
- 04. Mortician Resident Trainee.** Mortician Resident Trainee - Fifty dollars (\$50) (original license/annual renewal). (3-13-02)
- 05. Application Fee.** Application Fee – One hundred dollars (\$100). (3-13-02)

**06. Certificate Of Authority.** Certificate of Authority - Fifty dollars (\$50) (original certificate/annual renewal). (3-13-02)

**07. Application For Reinstatement.** Application for reinstatement within five (5) years - Twenty-five dollars (\$25) reinstatement fee and annual renewal fees for back years (Reference Section 67-2614, Idaho Code). (7-1-93)

**08. Maintenance Of Pre-Need Trust Accounts Fee.** Pursuant to Section 54-1134 D., Idaho Code, a fee not to exceed ten percent (10%) of the annual earned interest income may be charged for maintenance of pre-need trust accounts. (7-1-93)

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

### 58.01.11 - GROUND WATER QUALITY RULE

DOCKET NO. 58-0111-0201

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has initiated proposed rulemaking procedures. The action is authorized by Sections 39-105, 39-107, 39-120 and 39-126, Idaho Code.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before May 15, 2002. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Section 004 is being deleted as it refers to an IDAPA citation in Idaho's Water Quality Standards and Wastewater Treatment Requirements that no longer exists. All ground water quality standards are now contained within the Ground Water Quality Rule. Subsection 200.01.c. is being deleted as standards for radioactive materials are already included in Table II; the reference incorporated in Subsection 200.01.c.i. and 200.01.c.ii. is not usually applicable to ground water and the levels conflict with those in Table II. Subsection 200.02 is being amended to provide that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by DEQ. This change reflects current DEQ practice allowing mining operations to analyze cyanide as weak acid dissociable cyanide.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in June 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.state.id.us/deq](http://www.state.id.us/deq).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact Susan Burke at (208)373-0502 or [sburke@deq.state.id.us](mailto:sburke@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before May 22, 2002.

DATED this 20th day of March, 2002.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418 / Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0111-0201

~~004. CONFLICT WITH THE IDAHO WATER QUALITY STANDARDS AND WASTEWATER TREATMENT REQUIREMENTS.~~

~~The Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements," contain provisions establishing ground water quality standards. To the extent a conflict exists between this rule and the ground water quality standards in IDAPA 58.01.02.299 of the Water Quality Standards and Wastewater Treatment Requirements, this rule shall prevail.~~

~~(3-20-97)~~

004. -- 005. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

**200. GROUND WATER QUALITY STANDARDS.**

The following numerical and narrative standards apply to all ground water of the state and shall not be exceeded unless otherwise allowed in this rule. (3-20-97)

**01. Numerical Ground Water Quality Standards.** (3-20-97)

a. The Primary Constituent Standards are based on protection of human health and are identified in Table II.

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
7440-36-0	Antimony	0.006
7440-38-2	Arsenic	0.05
1332-21-4	Asbestos	7 million fibers/l longer than 10 um
7440-39-3	Barium	2
7440-41-7	Beryllium	0.004
7440-43-9	Cadmium	0.005
7440-47-3	Chromium	0.1
7440-50-8	Copper	1.3
57-12-5	Cyanide	0.2
16984-48-8	Fluoride	4
7439-92-1	Lead	0.015
7439-97-6	Mercury	0.002
*	Nitrate (as N)	10

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
*	Nitrite (as N)	1
*	Nitrate and Nitrite (both as N)	10
7782-49-2	Selenium	0.05
7440-28-0	Thallium	0.002
15972-60-8	Alachlor	0.002
1912-24-9	Atrazine	0.003
71-43-2	Benzene	0.005
50-32-8	Benzo(a)pyrene (PAH)	0.0002
75-27-4	Bromodichloromethane (THM)	0.1
75-25-2	Bromoform (THM)	0.1
1563-66-2	Carbofuran	0.04
56-23-5	Carbon Tetrachloride	0.005
57-74-9	Chlordane	0.002
124-48-1	Chlorodibromomethane (THM)	0.1
67-66-3	Chloroform(THM)	0.002
94-75-7	2,4-D	0.07
75-99-0	Dalapon	0.2
103-23-1	Di(2-ethylhexyl) adipate	0.4
96-12-8	Dibromochloropropane	0.0002
541-73-1	Dichlorobenzene m-	0.6
95-50-1	Dichlorobenzene o-	0.6
106-46-7	1,4(para)-Dichlorobenzene or Dichlorobenzene p-	0.075
107-06-2	1,2-Dichloroethane	0.005
75-35-4	1,1-Dichloroethylene	0.007
156-59-2	cis-1, 2-Dichloroethylene	0.07
156-60-5	trans-1, 2-Dichloroethylene	0.1
75-09-2	Dichloromethane	0.005
78-87-5	1,2-Dichloropropane	0.005
117-81-7	Di(2-ethylhexyl)phthalate	0.006
88-85-7	Dinoseb	0.007
85-00-7	Diquat	0.02

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
145-73-3	Endothall	0.1
72-20-8	Endrin	0.002
100-41-4	Ethylbenzene	0.7
106-93-4	Ethylene dibromide	0.00005
1071-83-6	Glyphosate	0.7
76-44-8	Heptachlor	0.0004
1024-57-3	Heptachlor epoxide	0.0002
118-74-1	Hexachlorobenzene	0.001
77-47-4	Hexachlorocyclopentadiene	0.05
58-89-9	Lindane	0.0002
72-43-5	Methoxychlor	0.04
108-90-7	Monochlorobenzene	0.1
23135-22-0	Oxamyl (Vydate)	0.2
87-86-5	Pentachlorophenol	0.001
1918-02-1	Picloram	0.5
1336-36-3	Polychlorinated biphenyls (PCBs)	0.0005
122-34-9	Simazine	0.004
100-42-5	Styrene	0.1
1746-01-6	2,3,7,8-TCDD (Dioxin)	3.0 x 10 <sup>-8</sup>
127-18-4	Tetrachloroethylene	0.005
108-88-3	Toluene	1
*	Total Trihalomethanes [the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)]	0.1
8001-35-2	Toxaphene	0.003
93-72-1	2,4,5-TP (Silvex)	0.05
120-82-1	1,2,4-Trichlorobenzene	0.07
71-55-6	1,1,1-Trichloroethane	0.2
79-00-5	1,1,2-Trichloroethane	0.005
79-01-6	Trichloroethylene	0.005
75-01-4	Vinyl Chloride	0.002
1330-20-7	Xylenes (total)	10

Table II - Primary Constituent Standards		
Chemical Abstract Service Number	Constituent	Standard (mg/l unless otherwise specified)
*	Gross alpha particle activity (including radium -226, but excluding radon and uranium)	15 pCi/l
*	Combined beta/photon emitters	4 millirems/year effective dose equivalent
*	Combined Radium - 226 and radium 228	5 pCi/l
*	Strontium 90	8 pCi/l
*	Tritium	20,000 pCi/l
*	Total Coliform	1 colony forming unit/100 ml

\* No Chemical Abstract Service Number exists for this constituent. (3-20-97)

b. The Secondary Constituent Standards are generally based on aesthetic qualities and are identified in Table III.

Table III - Secondary Constituent Standards	
Constituent	Standard (mg/l unless otherwise specified)
Aluminum	0.2
Chloride	250
Color	15 Color Units
Foaming Agents	0.5
Iron	0.3
Manganese	0.05
Odor	3.0 Threshold Odor Number
pH	6.5 to 8.5 (no units apply)
Silver	0.1
Sulfate	250
Total Dissolved Solids	500
Zinc	5

(3-20-97)

e. *The numerical standards for additional radioactive materials are:* (3-20-97)

i. *Radioactive materials or radioactivity in ground water shall not exceed the values listed in the*



~~Code of Federal Regulations, Title 10, Chapter 1, Part 20, Appendix B, Table 2, Effluent Concentrations, Column 2, revised as of July 1, 1995. If a radioactive material or radioactivity also has a standard listed in Subsection 200.01.a., Table H, the more stringent standard shall apply. (3-20-97)~~

~~ii. Radioactive materials or radioactivity shall not exceed concentrations required to meet the standards set forth in the Code of Federal Regulations, Title 10, Chapter 1, Part 20, revised as of July 1, 1995, for maximum exposure of critical human organs in the case of foodstuffs harvested from these waters for human consumption. (3-20-97)~~

~~dc. Sample preservation and analytical procedures to determine compliance with the standards identified in Subsection 200.01 shall be in accordance with the following, except that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by the Department: (3-20-97)(\_\_\_\_\_)~~

~~i. Environmental Protection Agency, Code of Federal Regulations, Title 40, Parts 141 and 143, revised as of July 1995 2001; or (3-20-97)(\_\_\_\_\_)~~

~~ii. Another method approved by the Department. (3-20-97)~~

**02. Narrative Ground Water Quality Standards.** Contaminant concentrations, alone or in combination with other contaminants or properties, shall not cause the ground water to be hazardous, deleterious, carcinogenic, mutagenic, teratogenic, or toxic. Determinations of specific numerical levels when applying this standard shall be based on: (3-20-97)

a. Best scientific information currently available on adverse effects of the contaminant(s); (3-20-97)

b. Protection of a beneficial use; or (3-20-97)

c. Practical quantitation levels for the contaminant(s), if they exceed the levels identified in Subsection 200.02.a. or 200.02.b. (3-20-97)

**03. Natural Background Level.** If the natural background level of a constituent exceeds the standard in this section, the natural background level shall be used as the standard. (3-20-97)

# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.05 - SEPARATION FROM SERVICE RULES OF PERSI

### DOCKET NO. 59-0105-0201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The temporary rule is effective January 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodations must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is being undertaken jointly with Docket No. 59-0106-0201 to 1) implement changes either authorized or required by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), and 2) to adopt plan provisions required by the Internal Revenue Service as a condition of receiving a favorable letter of determination in November, 2001. Together, these dockets are intended to adopt rules which constitute good faith compliance with the requirements of EGTRRA and they should be construed in accordance with EGTRRA and guidance issued thereunder.

Under this docket, four (4) new rules are adopted and proposed. Rule 105 permits in-service transfers from certain retirement plans into the Base Plan for purchasing service under limited circumstances, including buying back service lost due to a separation benefit, a waiting period, or delinquent contributions. Such transfers are subject to future guidance from the IRS. Rule 124 addresses rollovers into the Base Plan. Rollovers are accepted from all eligible retirement plans, but after-tax contributions will be accepted as rollovers only from qualified plans and 403(b) plans. Rule 125 provides for rollovers out of the Base Plan as required by federal law. Rule 126 provides for minimum distributions generally as provided by federal law, and provides a maximum distribution period for payment of death benefits under the Base Plan.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule change will confer a benefit on PERSI members and employers and is necessary to comply with federal law changes and requirements.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Retirement Board has exclusive fiduciary responsibility for plan operations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rules, contact Alan H. Winkle, Executive Director of PERSI, 334-3365.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 22, 2002.

DATED this 19th day of March, 2002.

Alan H. Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8<sup>th</sup>, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-3365  
FAX: 208-334-3804

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0105-0201**

**105. IN-SERVICE TRANSFERS TO REINSTATE SERVICE (Rule 105).**

To the extent permitted by federal law, and in accordance with any regulation or other guidance issued by the Internal Revenue Service, an active member may transfer funds from a 401(k), a 403(b), or an eligible 457(b) plan, in which they are currently eligible to participate, to the Base Plan for purposes of buying back service previously forfeited due to receiving a separation benefit, purchasing service related to eligible waiting periods, or purchasing service for periods of delinquent contributions. (1-1-02)T

**106. -- 123. (RESERVED).**

**124. ROLLOVERS ACCEPTED INTO THE BASE PLAN (Rule 124).**

The PERSI Base Plan will accept participant rollover contributions and direct rollovers of distributions made after December 31, 2001, for purposes of reinstating or purchasing service as permitted under the plan, from the following plans. (1-1-02)T

**01. Qualified Plans.** A qualified plan described in section 401(a) or 403(a) of the Internal Revenue Code (Code). After-tax contributions may be rolled over if separately identified. (1-1-02)T

**02. Annuity Contracts.** An annuity contract described in section 403(b) of the Code, including after-tax contributions if identified separately. (1-1-02)T

**03. 457 Plans.** An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. (1-1-02)T

**04. IRAs.** Any portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income. (1-1-02)T

**125. DIRECT ROLLOVERS OUT OF THE BASE PLAN (Rule 125).**

A direct rollover is a payment by the plan to an eligible retirement plan specified by the distributee. (1-1-02)T

**01. Rollover Election.** This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500) paid directly to an eligible retirement plan specified by the distributee in a direct rollover. (1-1-02)T

**02. Eligible Rollover Distribution.** An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(1-1-02)T

a. Any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; (1-1-02)T

b. Any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code (Code); (1-1-02)T

c. Any amount that is distributed on account of hardship; (1-1-02)T

d. The portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and (1-1-02)T

e. Any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200) during a year. (1-1-02)T

**03. After-Tax Contributions.** For purposes of the direct rollover provisions in Subsection 125.02, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for the amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible. (1-1-02)T

**04. Eligible Retirement Plan.** An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan, or a qualified plan described in section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. (1-1-02)T

**05. Alternate Payees.** A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse, who is the alternate payee under a domestic retirement order, approved as provided in Sections 59-1319 and 1320, Idaho Code, are distributees with regard to the interest of the spouse or former spouse. (1-1-02)T

**126. REQUIRED MINIMUM DISTRIBUTIONS (Rule 126).**

**01. Default Application Of Federal Requirements.** With respect to distributions under the Base Plan made in calendar years beginning on or after January 1, 2001, and except as provided in Subsection 126.02, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code (Code) in accordance with the regulations under section 401(a)(9) that were proposed in January 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) of the Code or such other date specified in guidance published by the Internal Revenue Service. (1-1-02)T

**02. Death Benefits.** All death benefits payable under the Base Plan will be distributed as soon as administratively practical after request, but must in any event be distributed within fifteen (15) months of the member's death, unless the identify of the beneficiary is not ascertainable. (1-1-02)T

**10527. -- 999. (RESERVED).**

# IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

## 59.01.06 - RETIREMENT RULES OF PERSI

DOCKET NO. 59-0106-0201

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The temporary rule is effective January 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 15, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodations must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is being undertaken jointly with Docket No. 59-0105-0201 to 1) implement changes either authorized or required by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), and 2) to adopt plan provisions required by the Internal Revenue Service as a condition of receiving a favorable letter of determination in November, 2001. Together, these dockets are intended to adopt rules which constitute good faith compliance with the requirements of EGTRRA and they should be construed in accordance with EGTRRA and guidance issued thereunder.

Under this docket, four (4) new rules are adopted and proposed. Rule 175 provides that no forfeitures under the plan be used to increase benefits otherwise received by members of the plan as required by the IRS. Rule 176 provides that to the extent Base Plan benefits are determined based on actuarial assumptions, that those assumptions be specified in the plan as required by the IRS. Such assumptions already exist in the plan primarily at Retirement Rule 162. Rule 177 sets forth the limit of compensation that can be considered in calculating a benefit. Under EGTRRA, the limit for 2002 was raised to \$200,000, with potential annual cost-of-living increases. Rule 178 sets the limit that can be paid under a defined benefit plan as required by federal law. Under EGTRRA, the limit for 2002 was raised to \$160,000, adjusted for age and form of payment. This limit is also subject to potential annual increases based on cost-of-living, as determined by the IRS.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule change will confer a benefit on PERSI members and employers and is necessary to comply with federal law changes and requirements.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Retirement Board has exclusive fiduciary responsibility for plan operations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rules, contact Alan H. Winkle, Executive Director of PERSI, 334-3365.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 22, 2002.

DATED this 19th day of March, 2002.

Alan H. Winkle  
Executive Director  
Public Employee Retirement System of Idaho  
607 N. 8th, Boise, ID 83702  
P.O. Box 83720, Boise, ID 83720-0078  
Phone: 208-334-3365  
FAX: 208-334-3804

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 59-0106-0201**

**164. -- ~~499~~174. (RESERVED).**

**175. FORFEITURES (Rule 175).**

Forfeitures will not be applied to increase the benefits any employee would otherwise receive under the Base Plan. (1-1-02)T

**176. ACTUARIAL ASSUMPTIONS TO BE SPECIFIED (Rule 176).**

Whenever the amount of any Base Plan benefit is to be determined on the basis of actuarial assumptions, such assumptions will be specified in rule in a manner that precludes employer discretion. (1-1-02)T

**177. COMPENSATION LIMIT (Rule 177).**

**01. Limit.** Except for members of the system prior to July 1, 1996, as provided in Section 59-1302(31)(B), Idaho Code, the annual compensation of each participant taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed two hundred thousand dollars (\$200,000). Annual compensation means compensation during the calendar year (the determination period). In determining benefit accruals for determination periods beginning before January 1, 2002, compensation shall be two hundred thousand dollars (\$200,000). (1-1-02)T

**02. Limit Adjustment.** The two hundred thousand dollars (\$200,000) limit on annual compensation in Subsection 177.01 shall be adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year. (1-1-02)T

**178. DEFINED BENEFIT DOLLAR LIMITATION (Rule 178).**

Beginning effective January 1, 2002, the "defined benefit dollar limitation" is one hundred and sixty thousand dollars (\$160,000), as adjusted, effective January 1 of each year thereafter, under section 415(d) of the Internal Revenue Code (Code) in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. A limitation as adjusted under section 415(d) will apply to limitation years ending with or within the calendar year for which the adjustment applies. The "maximum permissible benefit" is the defined benefit dollar limitation (adjusted where required, as provided in Subsection 178.01 and, if applicable, in Subsections 177.02 or 177.03). (1-1-02)T

**01. Less Than Ten Years Of Service.** If the participant has fewer than ten (10) years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction: (1-1-02)T

i. The numerator of which is the number of years (or part thereof) of participation in the plan; and (1-1-02)T

ii. The denominator of which is ten (10). (1-1-02)T

**02. Benefit Begins Prior To Age Sixty-Two.** If the benefit of a participant begins prior to age sixty-two (62), the defined benefit dollar limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity beginning at the earlier age that is the actuarial equivalent of the defined benefit dollar limitation applicable to the participant at age sixty-two (62) (adjusted under Subsection 178.01, if required). The defined benefit dollar limitation applicable at an age prior to age sixty-two (62) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (1-1-02)T

**03. Benefit Begins At Age Sixty-Five.** If the benefit of a participant begins after the participant attains age sixty-five (65), the defined benefit dollar limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity beginning at the later age that is actuarially equivalent to the defined benefit dollar limitation applicable to the participant at age sixty-five (65) (adjusted under Subsection 178.01, if required). The actuarial equivalent of the defined benefit dollar limitation applicable at an age after age sixty-five (65) is determined as set forth in IRS regulation under section 415(b)(2) of the Code. (1-1-02)T

**04. Transition.** Benefit increases resulting from the increase in the limitations of section 415(b) of the Code shall be provided to all current and former participants (with benefits limited by section 415(b)) who have an accrued benefit under the plan immediately prior to the effective date of this Section (other than an accrued benefit resulting from a benefit increase solely as a result of the increases in limitations under section 415(b)). (1-1-02)T

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# Bulletin Summary Notice of Proposed Rulemakings

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## PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

**See Also In This Bulletin: Omnibus Rulemaking Notice - Notice of Legislative Approval of Pending Rules as Final Rules and Extension of Temporary Rules - Fifty-Sixth Legislature Second Regular Session 2002.**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036**

Docket No. **16-0305-0201** - Rules Governing Aid to the Aged, Blind and Disabled. Eliminates State cash assistance for some residents of Residential and Assisted Living Facilities and Certified Family Homes whose care will be paid for by Medicaid Personal Care Services. Some residents will continue to receive State cash assistance at a reduced rate if their income is too low to pay the facility for the cost of rent, utilities and food provided by the facility and not reimbursed by Medicaid; updates terminology. Comment by: 5/22/02.

Docket No. **16-0309-0202** – Rules Governing the Medical Assistance Program. Reimbursement to individual, non-commercial, non-emergency transportation providers using their private vehicles to transport Medicaid clients for medical and non-medical (waiver) activities will decrease from the amount reimbursed to state employees using their personal vehicles on state business, to a maximum of 5 passengers per vehicle, to a rate established by the Department for actual vehicle mileage regardless of how many Medicaid clients are being transported in the vehicle at the same time; meal reimbursement will decrease to a rate established by the Department. Comment by: 5/22/02.

Docket No. **16-0309-0203** – Rules Governing the Medical Assistance Program. Medicaid will only cover up to 4 covered drugs and pharmacy items per calendar month for eligible adults after the month of their 21st birthday only, unless prior authorized by the Department; if not prior authorized, recipients shall be responsible for charges which exceed 4 per calendar month. Comment by: 5/22/02.

Docket No. **16-0309-0204** - Rules Governing the Medical Assistance Program. Allows Division of Medicaid to pursue medical support costs from Absent Parents who have been court ordered to pay medical support for his/her child. Comment by: 5/22/02.

Docket No. **16-0309-0205** - Rules Governing the Medical Assistance Program. Changes in dental rules comply intent language in Department's Appropriations Bill to reduce Medicaid coverage to "emergency services only" for adults after the month of their 21st birthday. Comment by: 5/22/02.

Docket No. **16-0309-0206** - Rules Governing the Medical Assistance Program. Changes Medicaid reimbursement methodology for Medicaid claims that are also covered by Medicare Part B. New methodology will treat Medicare as any other third party resource (pay the provider up to the Medicaid allowed amount minus the third party, or Medicare, payment). Comment by: 5/22/02.

Docket No. **16-0601-0201** - Rules Governing Family and Children's Services. The current 5 dispositional codes used for child protection reports will be replaced by 2 dispositions: substantiated and unsubstantiated, with a clear definition of each. Comment by: 5/22/02.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY****1410 N. Hilton, Boise, ID 83706-1255**

Docket No. **58-0111-0201** - Ground Water Quality Rule. Provides that cyanide shall be analyzed as weak acid dissociable cyanide using a method approved by DEQ and currently in use; deletes obsolete sections. Comment by: 5/22/02.

**IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO****P.O. Box 83720, Boise, ID 83720-0078**

Docket No. **59-0105-0201** - Separation of Service Rules of PERSI. Complies with changes in federal law to include allowing for the purchase of service under limited circumstances; allows for rollovers into the Base Plan from eligible retirement plans and rollovers out of the Base Plan; and provides for minimum distributions generally as provided by federal law and provides a maximum distribution period for payment of death benefits under the Base Plan. Comment by: 5/22/02.

Docket No. **59-0106-0201** - Retirement Rules of PERSI. Complies with changes in federal law to include that no forfeitures under the plan may be used to increase benefits otherwise received by members of the plan as required by the IRS; provides that to the extent Base Plan benefits are determined based on actuarial assumptions, that those assumptions be specified in the plan as required by the IRS; sets forth the limit of compensation that can be considered in calculating a benefit; and sets the limit that can be paid under a defined benefit plan as required by federal law. Comment by: 5/22/02.

**SCHEDULED PUBLIC HEARINGS**

Public hearing have been scheduled for the following dockets:

**Department of Health and Welfare**

Docket No. **16-0601-0201** - Rules Governing Family and Children's Services.

Please refer to the Idaho Administrative Bulletin, **May 1, 2002, Volume 02-5** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering call (208) 332-1820 or write the Office of Administrative Rules, Department of Administration, 650 W. State St., Room 100, Boise, Idaho 83720-0306. Visa and Mastercard accepted.

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**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**This index tracks the history of all agency rulemakings from 1993 to the present.  
It includes all rulemaking activities on each chapter of rules  
and includes negotiated, temporary, proposed, pending  
and final rules, public hearing notices  
and vacated rulemaking notices.**

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